SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 22

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA ET AL., APPELLANTS,

vs.

YOUNG'S MARKET COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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[fol. 6]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. Eq. 736-H

YOUNG'S MARKET COMPANY, a Corporation; SIMON LEVI COMPANY, LTD., a Corporation; Haas Baruch & Company of San Diego, a Corporation; W. L. Koerber, Doing Business under the Fictitious Firm-name and Style of Koerber Distributing Company; George P. Higgins and George S. Higgins, Co-partners Doing Business under the Firm-Name and Style of Higgins & Higgins, a Co-partnership, Plaintiffs,

vs.

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA; Frank F. Merriam, Governor of the State of California; U. S. Webb, Attorney General of the State of California; Ray L. Riley, John C. Corbett, Fred E. Stewart, R. E. Collins, Orfa Jean Shontz, George M. Stout and A. H. Flickinger, Defendants

BILL IN EQUITY FOR INJUNCTION, ETC.—Filed July 30, 1935

To the Honorable the Judges of the District Court of the United States for the Southern District of California, Central Division:

Plaintiffs, corporations and individuals, citizens of the state of California, engaged in the business in California of importing beer manufactured in other states and distributing and selling such beer in California at wholesale, bring this suit on behalf of themselves and all other corporations and persons similarly situated, for the purpose of obtaining equitable relief and to enjoin and restrain the threatened deprivation, under color of certain statutes of the state of California, of certain rights, privileges and immunities secured to plaintiffs by the Constitution of the United States, the cause of action hereinafter asserted by

[fol. 7] plaintiffs having arisen under the Constitution of the United States, and the matter in controversy exceeding, exclusive of interest and costs, the sum or value of three thousand dollars ($3,000), plaintiffs thereupon complain and respectfully show to your Honors:

I

That plaintiff, Young's Market Company, a corporation, is now and at all times hereinafter mentioned has been a corporation duly organized and existing under and by virtue of the laws of the state of California, with its principal office for the transaction of business in the city of Los Angeles, county of Los Angeles, state of California; that said plaintiff is and for more than one year last past has been duly authorized to conduct and has engaged in the business of the purchase and sale of beer at wholesale; that said plaintiff cannot and does not engage in the manufacture of beer within the state of California, or elsewhere.

That plaintiff Simon Levi Company, Ltd., a corporation, is now and at all times hereinafter mentioned has been a corporation duly organized and existing under and by virtue of the laws of the state of California with its principal office for the transaction of business in the city of Los Angeles, county of Los Angeles, state of California; that said plaintiff is and for more than one year last past has been duly authorized to conduct and has engaged in the business of the purchase and sale of beer at wholesale; that said plaintiff cannot and does not engage in the manufacture of beer within the state of California, or elsewhere.

That plaintiff, Haas Baruch & Company, of San Diego, a corporation, is now and at all times hereinafter mentioned has been a corporation duly organized and existing under and by virtue of the laws of the state of California, with its principal office for the transaction of business in the city of San Diego, county of San Diego, state of California; that said plaintiff is and for more than one year last past has been duly authorized to conduct and has en-
[fol. 8] gaged in the business of the purchase and sale of beer at wholesale; that said plaintiff cannot and does not engage in the manufacture of beer within the state of California, or elsewhere.

That plaintiff, W. L. Koerber, is a citizen and resident of San Jose, California, and is now and at all times here-

inafter mentioned has been engaged in the sale and distribution of beer at San Jose, California, under the fictitious firm-name and style of Koerber Distributing Company; that said plaintiff is now and for more than one year last past has been duly authorized to conduct and has engaged in the business of the purchase and sale of beer at wholesale; that said plaintiff does not engage in the manufacture of beer within the state of California, or elsewhere.

That plaintiffs, George P. Higgins and George S. Higgins, are citizens and residents of the city of Bakersfield, county of Kern, state of California, and are now and at all times hereinafter mentioned have been co-partners doing business under the firm name and style of Higgins & Higgins, authorized to conduct and engaged in the business of the purchase and sale of beer at wholesale; that said plaintiffs do not engage in the manufacture of beer within the state of California, or elsewhere.

II

That there are numerous other persons, corporations, firms and partnerships in the state of California engaged in business and occupations similar to that in which plaintiffs are engaged, and each of whom has an interest in the subject matter of this litigation; that said persons, corporations, firms and partnerships, many of whom are unknown to plaintiffs, are too numerous to be joined herein, and by reason thereof plaintiffs bring this action for themselves and in addition for the benefit of each and all of said persons, corporations, firms and partnerships similarly situated.

[fol. 9]

III

That defendant, Frank F. Merriam, is the duly qualified, elected and acting Governor of the State of California, and is the executive head of the government of the State of California, and possesses, is charged with and exercises, by virtue of the various laws of said State, a domination and control over the administration and enforcement of such laws, and particularly a certain statute entitled "An Act to license, regulate and control the manufacture, transportation, sale, purchase, possession and disposition of alcoholic beverages; to levy an excise tax on the sale of

alcoholic beverages; to provide for the licensing of the manufacture, distribution and sale of alcoholic beverages; to prescribe penalties for the violation of this act; to make an appropriation for the enforcement of this act; to take effect immediately", which said Act is known and designated as Senate Bill No. 919, Chapter 330, Statutes of 1935, of the State of California, and is hereinafter called "Alcoholic Beverage Control Act"; that said defendant, Frank F. Merriam, is a citizen and resident of the City of Long Beach, County of Los Angeles, State of California.

That defendant, State Board of Equalization of the State of California, is a board created and empowered to act under and by virtue of the provisions of the Constitution of the State of California and the statutes of the State of California relating and referring to the powers and constitution of such Board of Equalization of the State of California; that such board is the administrative board charged with various and sundry duties having to do with the assessment and collection of taxes and licenses within said State, and is particularly empowered and directed to enforce each and all of the provisions of the Alcoholic Beverage Control Act, as more particularly appears from the provisions thereof; that defendants, Ray L. Riley, John C. Corbett, Fred E. Stewart, R. E. Collins and Orfa Jean Shontz are, and each of them is, members of defendant, [fol. 10] Board of Equalization of the State of California; that said defendants, Ray L. Riley, John C. Corbett, Fred E. Stewart, R. E. Collins and Orfa Jean Shontz constitute the entire membership of said board.

That defendant, Ray L. Riley, is now and at all the times hereinafter mentioned has been chairman and controller of said Board of Equalization of the State of California, and as such chairman and controller of such Board of Equalization of the State of California is charged with the administration of such Alcoholic Beverage Control Act; that said Ray L. Riley is now and at all the times hereinafter mentioned has been a citizen and resident of the City of Colton, County of Los Angeles, State of California; that defendants, John C. Corbett, Fred E. Stewart, R. E. Collins and Orfa Jean Shontz, as members of said Board of Equalization of the State of California, are charged with the administration of such Alcoholic Beverage Control Act, and are citizens of and reside at the following locations: John

C. Corbett, City of San Francisco, County of San Francisco, State of California; Fred E. Stewart, City of Oakland, County of Alameda, State of California; R. E. Collins, City of Redding, County of Shasta, State of California; and Orfa Jean Shontz, City of Montrose, County of Los Angeles, State of California.

That defendant, George M. Stout, is the chief beverage control officer of defendant, State Board of Equalization of the State of California, and that defendant, A. H. Flickinger, is the chief beverage control administrator of said State Board of Equalization of the State of California, and as such both of said defendants are charged with the duty of administering and enforcing said Alcoholic Beverage Control Act.

That defendant, U. S. Webb, is the duly elected, qualified and acting Attorney General of the State of California, [fol. 11] and is the principal legal officer of said State and is charged with the enforcement of the laws of said State, and particularly is specifically charged with the enforcement of said Alcoholic Beverage Control Act.

IV

That said Alcoholic Beverage Control Act was enacted by the Legislature of the State of California, and was approved by defendant, Frank F. Merriam, as Governor of the State of California on the 13th day of June, 1935; that according to the terms thereof the same became effective on the 1st day of July, 1935; that a copy of said Act is attached hereto, marked Exhibit "A" and incorporated herein with the same force and effect as if set out herein in full.

V

That said Alcoholic Beverage Control Act is unconstitutional, in violation of the rights of plaintiffs, and void, in particular with regard to the following provisions thereof:

1. Section 2, subsection (k) thereof, which reads:

"'Importer' means every person who, in the case of alcoholic beverages brought into this State from outside of this State, is the first in possession thereof within this State after the act of importation is completed."

2. Section 3, which reads:

"On and after July 1, 1935, no person shall perform any act or acts which would constitute such person a manufacturer, rectifier, importer, wholesaler, or retailer of any alcoholic beverage within the meaning of this act or shall package, label or sell any alcoholic beverage unless such person is authorized to do so by a license duly issued pursuant to the provisions of this act, or pursuant to the provisions of the State Liquor Control Act, Chapter 658, Statutes of 1933. Any person violating any provision of this section shall be guilty of a misdemeanor."

3. That portion of Section 5 thereof reading as follows:

"The following are the types of licenses to be issued under this act and the annual fees to be charged therefor:

* * * * * * *

8. Beer importers license.....$500.00 per year

* * * * * * *"

[fol. 12] 4. That portion of Section 6 thereof reading as follows:

"Except as otherwise provided in this act and subject to the provisions of section 22 of Article XX of the Constitution, the licenses provided for in the preceding section shall authorize the person to whom issued to exercise the following rights and privileges and no others at the premises for which issued during the year for which issued.

* * * * * * *

(d) Any importer's license authorizes the person to whom issued to become an importer of alcoholic beverages specified in the license and to export such alcoholic beverage.

* * * * * * *"

5. That portion of Section 7 thereof reading as follows:

"Each license issued under this act shall be issued to a specific person, and * * * shall be issued for a specific location, the principal address of which shall be indicated on the license. Separate licenses shall be issued for each

of the premises of any business establishment having more than one location.

* * * * * * *

Each license issued under this act is separate and distinct, shall be nontransferable from one person to another, and shall be transferable from the premises for which issued only as may be permitted by the board, upon payment of a transfer fee of five dollars for each license.

* * * * * * *"

6. Section 49 thereof, which reads:

"Common or private carriers shall transport alcoholic beverages into the State only when such alcoholic beverages are to be consigned to a licensed importer. The carrier must obtain the receipt of such importer for the alcoholic beverage so transported and delivered and, if the consignee refuses to give a receipt and show his importer's license to the carrier, the carrier shall be relieved of all responsibility for delivering said alcoholic beverage. Where the consignee is not a licensed importer the carrier shall immediately notify the board at Sacramento, giving full details as to the character of shipment, point of origin, destination, and address of the consignor and consignee and within ten days such alcoholic beverage shall be summarily forfeited to the State of California and shall be turned over to the board for sale at public auction."

7. Sections 10 and 11 of said Act in so far as they apply to importers' licenses, which said sections refer in substance to the manner of application for license and issuance or denial thereof.

8. Section 31 of said Act, in so far as said section applies [fol. 13] to importers' licenses, which said section specifies the manner of collection of said importer's license and provides for the seizure of the property of the importer for failure to pay such license.

VI

That under and by virtue of the provisions of said Alcoholic Beverage Control Act, and the authority purportedly conferred by it on defendants, State Board of Equaliza-

tion of the State of California, and the individuals constituting the said board, said defendants adopted, promulgated and threaten to enforce certain rules and regulations governing traffic in alcoholic beverages, among which said rules and regulations is the following:

"Rule 9—Imports

(a) Importer's License Necessary.—The owner or purchaser of alcoholic beverages shipped into this State from outside this State must have an appropriate Importer's license for the premises at which such beverages first come to rest in this State after the act of importation is completed.

A licensee holding an importer's license for one premise may not have alcoholic beverages shipped to him from a point outside the State directly to another premises in this State for which he has not been issued an Importer's license.

Furthermore, the holder of an Importer's license may not take orders from wholesalers or retailers throughout the State and ship such beverages from outside the State direct to such wholesalers or retailers unless they hold appropriate Importers' licenses for each of the premises to which such beverages are consigned. Beverages may be shipped from points outside the State only to premises for which Importers' licenses have been issued. After the beverages have been delivered to the premises for which the consignee holds an Importer's license, he may, if he desires to do so, reship them to other premises for which appropriate wholesale or retail licenses have been issued.

(b) Carriers Must Deliver Only to Licensed Importers.—No alcoholic beverages shall be transported into this State by any carrier, either common or private, unless consigned to a licensed importer. The carrier must obtain the receipt of such an importer for any beverages so transported, and if the carrier shall find that any shipment is consigned to, or intended for delivery to, anyone not a licensed importer, the beverages must not be delivered. In such case the carrier must immediately notify the board at Sacramento, giving full details as to the character of shipment, point of [fol. 14] origin, destination, and names and addresses of consignor and consignee; no such shipment shall be re-

leased by the carrier, except upon written order of the board.

(c) Carriers Must Report Imports Monthly.—Every carrier, common or private, operating into this State in foreign or interstate commerce shall report to the board monthly, on forms to be obtained from the board, as to all consignments of alcoholic beverages originating outside this State and transported by such carrier to points within this State. Such reports must be filed at Sacramento not later than the fifteenth day of each month as to all consignments so transported during the calendar month previous, and must show character of shipment, point of origin, destination and names and addresses of consignor and consignee of each consignment.

(d) Mail Shipments Confined to Licensed Importers.—No alcoholic beverages shall be transported into this State by United States mail for delivery to anyone except a licensed importer. Postal authorities shall refuse delivery of any shipment of alcoholic beverages originating outside of this State unless the addressee can establish to their satisfaction that he is duly licensed by this board to receive such a shipment.

(e) Importer's License Does Not Authorize Sale.—Every licensed importer who proposes to bottle or prepare imported alcoholic beverages or to sell such beverages in this State must first obtain appropriate Manufacturer's and Wholesaler's or Retailer's licenses as provided in the Act. An Importer's license does not authorize bottling, preparation or resale of alcoholic beverages nor does any other license authorize importation of such beverages."

VII

That under the laws of the State of California, and in particular under the provisions of the Alcoholic Beverage Control Act, beer is recognized as a commodity which may lawfully be made, bought and sold within the State of California, and is a proper and lawful subject of interstate commerce; that the right to manufacture, possess and sell beer within California is limited, restricted or prohibited only to the extent that the valid provisions of the Alcoholic Beverage Control Act limit, restrict or prohibit such manu-

facture, possession and sale; that the importation of beer into California from points without the State of California is lawful, and is restricted, limited or prohibited only to the extent that the valid provisions of the Alcoholic Beverage Control act so limit, restrict or prohibit such importa-
[fol. 15] tion.

Under the provisions of the Alcoholic Beverage Control Act a person engaged in the wholesale distribution and sale of beer manufactured within the State of California is required to obtain only a wholesaler's license and pay a license fee therefor of $50, whereas plaintiffs engaged in the business of importing, selling and distributing beer manufactured and brewed outside the state are purportedly required by said Act to obtain an importer's license and pay a fee therefor of $500 and a wholesaler's license and pay a fee therefor of $50; that the products of the plaintiffs and the right of the plaintiffs to sell and deal in the same is thereby discriminated against solely on the basis of their origin without the State of California, and, as such, such provisions of said act are in violation of the provisions of the Constitution of the United States as hereinafter set forth.

VIII

That said Alcoholic Beverage Control Act and the regulations issued thereunder are unconstitutional and void because at the time of their enactment and promulgation and ever since said date they were and are contrary to and in violation of Section 8 of Article I of the Constitution of the United States, which reads in part as follows:

"The Congress shall have power to * * * regulate commerce with foreign nations and among the several states and with the Indian tribes."

And also by reason of their violation of that portion of the 14th Amendment to the Constitution of the United States, which provides that:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

And also by reason of their violation of that portion of [fol. 16] Section 2 of Article IV of the Constitution of the United States, which reads as follows:

"The citizens of each State shall be entitled to all privileges and immunities of citizens of the several States;"

IX

That the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of three thousand dollars ($3,000); that the jurisdiction of this court is invoked because and by reason of certain and various federal questions involved, as follows: That the validity of the Alcoholic Beverage Control Act and the regulations issued and promulgated by defendant Board of Equalization and the members thereof is in question on the grounds that they violate, and ever since the enactment and promulgation thereof have violated, the provisions of Section 8 of Article I of the Constitution of the United States, and the 14th Amendment to the Constitution of the United States; that there is involved in this controversy the right of plaintiffs, and each of them, and others similarly situated, to buy, transport and import in interstate commerce, and to sell and deliver to purchasers in the State of California, beer manufactured outside of the State of California, free from the unlawful discriminatory provisions and onerous burdens imposed by the Alcoholic Beverage Control Act; that the right of plaintiffs to so buy, transport and import in interstate commerce, and to sell and deliver to purchasers in the State of California, beer manufactured outside the State of California, free from such unlawful burdens and discriminatory provisions of said act, is of a value as to each of them in excess of the sum of $3,000; that the value of the beer which each plaintiff has annually purchased, imported into and sold in the State of California, and which each will annually so buy, transport and import in interstate commerce into the State of California, upon being freed from such burdensome and discriminatory provisions as to each of plaintiffs, is greatly in excess of the sum of $25,000; that each of the plaintiffs, by reason of a [fol. 17] great expenditure of money by advertising and other means has developed and enjoys a large demand and sale for beer manufactured outside the State of California;

that in the State of California there exists a large demand on the part of numerous consumers and retail dealers for such beer so manufactured outside this State and sold and distributed in this State by plaintiffs and others similarly situated, and, but for the matters and things herein contained, each of the plaintiffs, and others similarly situated, could and would import and sell in the State of California a much greater amount than they now sell of beer manufactured outside the State of California.

X

That plaintiff, Young's Market Company, is and has for more than one year last past been engaged in the business of importing in interstate commerce from the State of Wisconsin into the State of California, beer manufactured and brewed by the Premier-Pabst Corporation, a corporation organized and existing under the laws of the State of Delaware, and engaged in the manufacture of beer in the State of Wisconsin, and that said plaintiff has built up and established a large and profitable trade in the sale of such products at wholesale in the cities of Los Angeles, Long Beach and San Diego, California; that said business amounts to a sum in excess of $400,000 annually; that said plaintiff maintains a warehouse and distribution facilities for sale and distribution of the beer so purchased and imported by it at each of the places of business as aforesaid, and is the holder of valid subsisting beer wholesaler's licenses issued by the State Board of Equalization of the State of California, authorizing said plaintiff to sell beer at wholesale at each of said places; that the method under which said plaintiff has conducted its business of purchasing, importing, selling and distributing said beer so imported, and under which it desires to continue its business, is as follows: Said plaintiff, Young's Market Company, places an order with Premier-Pabst Sales Company for the shipment of beer manufactured in Wisconsin by the said Premier-Pabst Corporation, to said plaintiff f.o.b. cars, Milwaukee, Wisconsin, for delivery to said plaintiff at one [fol. 18] of its aforesaid places of business; that pursuant to said order, Premier-Pabst Corporation ships, by a railroad common carrier, beer in car-load lots from the brewery of Premier-Pabst Corporation in Milwaukee, Wisconsin, to said plaintiff for delivery by the carrier at one of

the aforesaid places of business of said plaintiff in the State of California, where the same is received, unloaded and sold by said plaintiff in the course of its wholesale business conducted at said place.

That under the terms of said Alcoholic Beverage Control Act, Young's Market Company is required to procure from defendant, State Board of Equalization, an importer's license for each of the three points in the State of California whereat said plaintiff maintains a place of business, i. e., Los Angeles, Long Beach and San Diego, and said plaintiff is thereby taxed an unlawful and discriminatory tax in the sum of $1,500; that said plaintiff, under the terms of said act, may not cause beer to be shipped by said Premier-Pabst Corporation from Milwaukee, Wisconsin, or from any other point outside of the State of California, to any of its three places of business, without obtaining from defendant said importer's license for such point; that the railroad freight rates and other transportation charges from Milwaukee, Wisconsin, direct to San Diego and direct to Long Beach are much less than the railroad freight rates and other transportation charges from Milwaukee, Wisconsin, to Los Angeles, plus the freight rate and other transportation charges from Los Angeles to San Diego or to Long Beach, respectively. Accordingly, it has been this plaintiff's method of transacting business in the past, and this plaintiff desires to continue in the future, as it alleges it has a lawful right to do, to cause shipments of beer to be made from Milwaukee, Wisconsin, direct to its several places of business, without first having said shipment come to rest at its warehouse in Los Angeles.

[fol. 19] XI

That plaintiff, Simon Levi Company, Ltd:, is and has for more than one year last past been engaged in the business of importing in interstate commerce from the State of Wisconsin into the State of California, beer manufactured and brewed by the Jos. Schlitz Brewing Company in the city of Milwaukee, State of Wisconsin; that said business amounts to a sum in excess of $400,000 annually; that said Jos. Schlitz Brewing Company is a corporation, organized and existing under and by virtue of the laws of the State of Wisconsin, and is engaged in the manufacture of beer in the city of Milwaukee, State of Wisconsin; that said

plaintiff has built up and established a large and profitable trade in the sale of said product at wholesale in the cities of Los Angeles, Long Beach, San Diego, San Bernardino, Indio, El Centro, Needles, Winterhaven, Wilmington, Bakersfield, Fresno and Hanford, California; that said plaintiff maintains a warehouse and distribution facilities for sale and distribution of the beer so purchased and imported by it at each of the places of said plaintiff's business as aforesaid, and is the holder of valid subsisting beer wholesaler's licenses issued by the State Board of Equalization of the State of California, authorizing said plaintiff to sell beer at wholesale at each of said places; that the method under which said plaintiff has conducted its business of purchasing, importing, selling and distributing said beer so imported, and under which it desires to continue its business, is as follows: The plaintiff, Simon Levi Company, Ltd., places an order with the Jos. Schlitz Brewing Company for the shipment of beer manufactured in Wisconsin by the said Jos. Schlitz Brewing Company to said plaintiff, f.o.b. cars, Milwaukee, Wisconsin, for delivery to said plaintiff at one of its aforesaid places of business; that pursuant to said order, Jos. Schlitz Brewing Company ships, by a railroad common carrier, beer in carload lots from its brewery in Milwaukee, Wisconsin, to plaintiff for [fol. 20] delivery by the carrier at one of the aforesaid places of business of said plaintiff in the State of California, where the same is received, unloaded and sold by said plaintiff in the course of its wholesale business conducted at said place.

That under the terms of the Alcoholic Beverage Control Act, Simon Levi Company, Ltd., is required to procure from defendant, State Board of Equalization, an importer's license for each of the twelve points in the State of California whereat said plaintiff maintains a place of business, i. e., Los Angeles, Indio, El Centro, Needles, Winterhaven, San Bernardino, Long Beach, Wilmington, San Diego, Bakersfield, Fresno and Hanford, and said plaintiff is thereby taxed an unlawful and discriminatory tax under the terms of said act, in the sum of $6,000; that said plaintiff, under the terms of said act, may not cause beer to be shipped by said Jos. Schlitz Brewing Company from Milwaukee, Wisconsin, or from any other point outside of the State of California, to any of its twelve places

of business, without obtaining from defendant said importers's license for such point; that the railroad freight rates and other transportation rates and charges from Milwaukee, Wisconsin, direct to such points, and the back-haul or diversion rate from Milwaukee, Wisconsin, to such points, are much less than the railroad freight rates or other transportation charges from Milwaukee, Wisconsin, to Los Angeles, or to any of the other given points, plus the freight rate from Los Angeles, or such point, to any of the other points, respectively. Accordingly, it has been the method of transacting business of this plaintiff in the past, and this plaintiff desires to continue in the future, as it alleges it has a lawful right to do, to cause shipments of beer to be made from Milwaukee, Wisconsin, direct to its several places of business, or to divert such shipments to such places of business, or to utilize the privilege of a back-haul rate to such places of business, without first having said shipment come to rest at its warehouse in Los Angeles.

[fol. 21] XII

That plaintiff, Haas Baruch & Company, of San Diego, a corporation, is and has for more than one year last past been engaged in the business of importing in interstate commerce from the State of Missouri into the State of California, beer manufactured and brewed by Anheuser-Busch, Incorporated, in the city of St. Louis, State of Missouri; that said Anheuser-Busch, Incorporated, is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, and is engaged in the manufacture of beer in the city of St. Louis, State of Missouri; that said plaintiff has built up and established a large and profitable trade in the sale of said product at wholesale in the city of San Diego, State of California; that said business amounts to a sum in excess of $25,000 annually; that said plaintiff maintains a warehouse and distribution facilities for the sale and distribution of the beer so imported by it at such place of said plaintiff's business as aforesaid, and is the holder of a valid subsisting beer wholesaler's license issued by defendant State Board of Equalization, authorizing said plaintiff to sell beer at wholesale at said place; that the method under which said plaintiff has conducted its business of importing, selling and distributing said beer so imported, and under which it desires to con-

tinue its business, is as follows: The plaintiff, Haas Baruch & Company of San Diego, places an order with Anheuser-Busch, Incorporated, for the shipment of beer manufactured in Missouri by said Anheuser-Busch, Incorporated, to said plaintiff, f.o.b. cars, St. Louis, Missouri, for delivery to said plaintiff at its aforesaid place of business; that pursuant to said order, Anheuser-Busch, Incorporated, ships, by a railroad common carrier, beer in carload lots from its brewery in St. Louis, Missouri, to said plaintiff for delivery by the carrier at the aforesaid place of business of said plaintiff in the State of California, where the same is received, unloaded and sold by said plaintiff in the [fol. 22] course of its wholesale business conducted at said place.

XIII

That plaintiff, W. L. Koerber, is and has for more than one year last past been engaged in the business of purchasing and importing in interstate commerce from the state of Wisconsin into the state of California, beer manufactured and brewed by the Premier-Pabst Corporation, a corporation, at Milwaukee, Wisconsin, which said corporation is organized and existing under the laws of the State of Delaware, and engaged in the manufacture of beer in the State of Wisconsin, and that said plaintiff has built up and established a large and profitable trade, under the firm-name and style of Koerber Distributing Company, in the sale of said product at wholesale in the city of San Jose, State of California; that said plaintiff maintains a warehouse and distribution facilities for the sale and distribution of the beer so imported by him at San Jose, and is the holder of a valid subsisting beer wholesaler's license issued by defendant State Board of Equalization, authorizing said plaintiff to sell beer at wholesale at said place; that the method under which said plaintiff has conducted his business of importing, selling and distributing said beer so imported, and under which he desires to continue his business, is as follows: The plaintiff places an order with Premier-Pabst Corporation for the shipment of beer manufactured in Wisconsin by the said Premier-Pabst Corporation, to said plaintiff, f.o.b. cars, Milwaukee, Wisconsin, for delivery to said plaintiff at San Jose, California; that pursuant to said order, Premier Pabst Corporation ships, by a railroad common carrier, beer in carload lots from the brewery of

Premier-Pabst Corporation in Milwaukee, Wisconsin, to said plaintiff for delivery by the carrier at San Jose, California, where the same is received, unloaded, sold and distributed by plaintiff in the course of his wholesale business conducted at said place.

XIV

That plaintiffs, George P. Higgins and George S. Higgins, [fol. 23] are and have for more than one year last past been engaged in the business of purchasing and importing in interstate commerce from the State of Wisconsin into the State of California, beer manufactured and brewed by the Premier-Pabst Corporation, a corporation, at Milwaukee, Wisconsin, which said corporation is organized and existing under the laws of the State of Delaware, and engaged in the manufacture of beer in the State of Wisconsin, and that said plaintiffs have built up and established a large and profitable trade, under the firm-name and style of Higgins & Higgins, in the sale of said product at wholesale in the city of Bakersfield, State of California; that said plaintiffs maintain a warehouse and distribution facilities for the sale and distribution of the beer so imported by them at Bakersfield, California, and are the holders of a valid subsisting beer wholesaler's license issued by the State Board of Equalization of the State of California, authorizing said plaintiffs to sell beer at wholesale at said place; that the method under which said plaintiffs have conducted their business of importing, selling and distributing said beer so imported, and under which they desire to continue their business, is as follows: The plaintiffs place an order with Premier-Pabst Corporation for the shipment of beer manufactured in Wisconsin by the said Premier-Pabst Corporation, to said plaintiffs, f.o.b. cars, Milwaukee, Wisconsin, for delivery to said plaintiffs at Bakersfield, California; that pursuant to said order, Premier-Pabst Corporation ships, by a railroad common carrier, beer in carload lots from the brewery of Premier-Pabst Corporation in Milwaukee, Wisconsin, to said plaintiffs for delivery by the carrier at Bakersfield, California, where the same is received, unloaded, sold and distributed by plaintiffs in the course of their wholesale business conducted at said place.

XV

That plaintiffs have ordered and intend to order in the future the shipment of beer brewed and manufactured out- [fol. 24] side of California to the points as hereinabove stated, to be shipped to their several warehouses and places of business in the State of California, and that the railroad carriers and transportation companies have been instructed by defendants not to deliver such shipments, and have been warned by defendants that the delivery of such shipments to plaintiffs at their several places of business, until plaintiffs shall have acquired for each of such places of business the aforementioned $500 importer's license, would be a violation of law, and that defendants would thereupon cause said railroad carriers to be prosecuted, and prevent such transportation; that under and by the terms of said Act and Rule 9, subdivision (a), promulgated thereunder, plaintiffs are required to obtain such importer's license for each of their many places of business, since the trans-shipment of beer from a central point to their several places of business is economically prohibited by the additional freight rates, as hereinabove referred to, and since they must cause a shipment of beer to be unloaded and warehoused before the same can be reshipped, all to their great and irreparable expense.

XVI

That there are approximately thirty-four breweries in the State of California which compete with plaintiffs in the sale and distribution of beer in the State of California and the distributors of such locally manufactured beer are not required to pay said importer's license of $500 or any other similar tax or license fee; that a large quantity of beer is brewed and manufactured in the State of California by said brewers, and said beer so manufactured in this State is competitive to the beer manufactured in the State of Wisconsin and in the State of Missouri, as hereinabove alleged, and by plaintiffs transported to California for sale in this State; that the prices at which beer so imported into the State of California may be sold at wholesale, as com- [fol. 25] pared with prices at which the beer manufactured in this State may be sold at wholesale, is an item entering into the salability of such imported product; that the im-

position of an importer's license at each of plaintiff's points of distribution is a direct charge upon the beer so imported and upon the prices at which said imported beer may be sold in the State of California, and is an unfair discrimination and charge as against such beer so manufactured outside of the State of California and in favor of the beer manufactured within the State of California. That plaintiffs have at their various branch stores and warehouses, as aforesaid, large sums of capital invested and used in the business heretofore conducted by them of distributing beer which they have imported from outside this State, which said investments will be greatly depreciated and rendered valueless if said beer importer's license of $500 be not declared unconstitutional and invalid; inasmuch as the said $500 is an additional charge to plaintiffs and an additional cost of said beer, plaintiffs will be prevented from competing in the sale and distribution of beer, with beer manufactured in the State of California, as to which no such license is required, and these plaintiffs will be forever excluded from the sale of imported beer at their said branch warehouses and stores; their business will be seriously impaired, if not lost and destroyed, their money, efforts and time in advertising their said business and the said imported beer and in creating a custom therefor will be lost and plaintiffs will thereby be deprived of their property without due process of law, and the loss and damage that will be suffered by these plaintiffs, if said act, in the particulars hereinabove set forth, be further enforced, will be irreparable. Relying upon the provisions of the Constitution of the United States, as set out in paragraph VIII hereof, plaintiffs and others engaged in the business of importing beer into the State of California, and similarly situated to the plaintiffs, have refused to apply for and [fol. 26] obtain an importer's license for each of the various places of business at which plaintiffs and others so similarly situated import and receive beer; that defendants and each of them have threatened to, and, unless restrained and enjoined by this court from so doing, will enforce against plaintiffs and others similarly situated each and all of the provisions of said Alcoholic Beverage Control Act including the unconstitutional and void provisions thereof hereinbefore specifically mentioned.

XVII

That by reason of the favored position in which manufacturers of, and wholesalers and dealers in, beer manufactured in the State of California are placed under the provisions of said act, plaintiffs and others similarly situated cannot sell beer so imported as hereinbefore set forth in the State of California at a reasonable or other profit and, therefore, their business, to the extent hereinbefore mentioned, will be seriously impaired if not actually lost and destroyed; that the damage and loss which will be so suffered by plaintiffs and others similarly situated if the aforementioned provisions of said act are enforced against them will be irreparable; that plaintiffs are without any plain, adequate or speedy remedy at law in the premises and it is only by aid of the injunctive processes of this court that plaintiffs can be fully protected in the enjoyment of their property and rights; that the granting of a permanent injunction by this court against the enforcement of the aforementioned provisions of the said Alcoholic Beverage Control Act will prevent a multiplicity of suits and prosecutions which will arise in the event of any attempt to enforce the same; that the questions herein involved can only be determined by a court of equity in a proceeding of this nature.

[fol. 27] Wherefore, plaintiffs pray:

1. That the act of the legislature of the State of California known as the Alcoholic Beverage Control Act, as enacted in Senate Bill No. 919, Chapter 330, Statutes of 1935 of California, so far as said act imposes a "beer importer's license" of $500 per year, as specified in subdivision 8, section 5 of said act, and the provisions for the collection of said beer importer's license, as provided for in section 31 of said act, and the penalties for the failure to pay said beer importer's license, as specified in said act, and the regulations promulgated by the State Board of Equalization of the State of California, on July 2, 1935, be declared, adjudged and decreed to be void and of no effect, because contrary to the rights of these plaintiffs under Section 8 of Article 1 of the Constitution of the United States, to the extent that such rights are thereby violated.

2. That the said provisions of the Alcoholic Beverage Control Act and said regulations promulgated by the State

Board of Equalization of the State of California be declared, adjudged and decreed to be void and of no effect, because contrary to and in violation of the rights of these plaintiffs under the 14th Amendment to the Constitution of the United States, to the extent that such rights are thereby violated.

3. That the defendants, and each of them, their respective appointees, assistants and employes and successors in office, and each of them, be enjoined from in any way or manner whatsoever enforcing against these plaintiffs, and other distributors of beer similarly situated, the provisions of said Alcoholic Beverage Control Act, or the regulations issued thereunder, or any part or parts thereof, in so far as they violate the provisions of the Constitution of the United States or the statutes of the United States, and in so far as they affect the right of these plaintiffs to import and sell beer within the State of California, and from attempting to enforce against these plaintiffs, and other beer dis- [fol. 28] tributors similarly situated, any of the provisions of said statute or regulations hereinabove complained of, and from instituting or causing to be instituted any prosecution or proceeding, civil or criminal, against these plaintiffs, or any of them, their officers, agents or employes, or any of them, or against any beer distributors similarly situated, to enforce any of such provisions of said statute or regulations.

4. That wherefore and for as much as the plaintiffs are remediless in the premises according to either the laws of the State of California or of the United States or under the common law, and remediable only in equity in this honorable Court, and to the end that the plaintiffs may be protected from unjust prosecutions and saved from the aforesaid heavy statutory penalties, and may not be subjected to a multiplicity of suits which will otherwise result, and may not suffer great and irreparable injury, loss and damage, and may be permitted to pursue and carry on their businesses without unlawful hindrance and obstruction, and that their property may not be subjected to illegal seizures, the plaintiffs pray that a writ of subpœna issue against the defendants to appear and fully submit and make answer to this bill of complaint; and that a hearing and determination shall be had herein by three judges, as pro-

vided by Section 380 of the United States Codes Annotated (Judicial Code, Section 266, as amended), for an interlocutory injunction; and that upon the organization of such three-judge court and upon due notice to the defendants and each of them, that an interlocutory injunction, suspending and restraining the enforcement, operation and execution of said statute of California as above specified be made and entered.

5. That meanwhile and until the hearing and determination of the application for an interlocutory injunction, as aforesaid, this honorable Court issue its temporary restraining order, as provided in said Section 380 of the United States Codes Annotated, to prevent immediate, great and irreparable injury, loss and damage to the plaintiffs which will result as aforesaid, and particularly with [fol. 29] respect to the aforesaid statutory penalties, before notice can be served and a hearing had upon the application for an interlocutory injunction, restraining the defendants, and each of them, their respective appointees, assistants, employes and successors in office, and each of them, from enforcing or attempting to enforce any of the provisions of the Alcoholic Beverage Control Act, so far as said act imposes a "beer importer's license" of $500 per year, as specified in subdivision 8, section 5 of said act, and restraining said defendants, their officers, appointees, assistants and employes from attempting to collect said beer importer's license, and from instituting or causing to be instituted any prosecution or proceeding, civil or criminal, against these plaintiffs, or others similarly situated, for a failure to pay said importer's license, as specified in said act, and from imposing or attempting to impose any of the penalties for the failure of plaintiffs, or other beer distributors similarly situated, to pay said beer importer's license, and from seizing or attempting to seize, selling or attempting to sell, any property of a beer importer for failure to pay said beer importer's license, and from forfeiting or attempting to forfeit to the State of California any beer imported into the State of California, for failure of the consignee to pay said beer importer's license, and from interfering with or attempting to prevent any common or private carrier from transporting beer into the State of California for the sole reason that such beer may be consigned to an importer who

has not obtained such beer importer's license, and from interfering with or attempting to prevent any common or private carrier from delivering to such consignee beer which has been transported into the State of California consigned to a person who does not have such beer importer's license, because of such lack of license.

6. That upon final hearing of this cause such injunction be made permanent.

7. For such other and further relief in the premises as to [fols. 30-76] this honorable Court may seem just and equitable.

Edwin A. Meserve, M. J. Donnelly, Baldwin Robertson, William Larrabee, by Baldwin Robertson, Solicitors for Plaintiffs. Meserve, Mumper, Hughes & Robertson, 615 Richfield Building, Los Angeles, California.

Exhibit "A" to bill, being copy of Alcoholic Beverage Control Act, is omitted in printing as it appears in full in Statement as to Jurisdiction.

[fol. 77] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR TEMPORARY RESTRAINING ORDER AND APPLICATION FOR HEARING FOR INTERLOCUTORY INJUNCTION—Filed July 31, 1935

Now come plaintiffs and upon their verified complaint heretofore duly filed herein, file this their motion pursuant to section 380 of the United States Code Annotated (Judicial Code section 266 as amended) for the issuance of a temporary restraining order upon the grounds and in the manner set forth in said complaint to prevent immediate, great and irreparable injury, loss and damage which otherwise would result to the plaintiffs before the hearing and determination of the application for an interlocutory injunction herein may be had, or notice thereof be served,

particularly because of plaintiffs' statutory liability to pay the license tax complained of on July 1, 1935, and because in failing to so pay said taxes on or before said due date [fols. 78-90] said plaintiffs have become immediately liable by way of statutory penalty for the gross amount of said taxes and subject to the seizures provided for by said law as in their bill of complaint set forth and subject to the interference of their respective businesses as in said complaint set forth; and plaintiffs further make this their application to this court for a hearing on this cause for an interlocutory injunction in accordance with section 380 of the United States Codes Annotated.

E. A. Meserve, M. J. Donnelly, Baldwin Robertson and William Larrabee, by Baldwin Robertson, Attorneys for Plaintiffs. Meserve, Mumper, Hughes & Robertson, 615 Richfield Building, Los Angeles, California, of Counsel.

[fol. 91] IN UNITED STATES DISTRICT COURT

[Title omitted]

RETURN TO ORDER TO SHOW CAUSE, RESTRAINING ORDER AND APPLICATION FOR INTERLOCUTORY INJUNCTION—Filed Sept. 4, 1935

To the Honorable Judges of the District Court of the United States for the Southern District of California, Central Division:

Come now the above named defendants, Board of Equalization of the State of California, John C. Corbett, Fred E. Stewart, Re. E. Collins, Orfa Jean Shontz, Frank F. Merriam and U. S. Webb, and each of them, and for their return to the Order to Show Cause, Temporary Restraining Order and Application for Interlocutory Injunction, and why the same should not be issued against them, respectfully state as follows:

[fol. 92] I

Deny that the Alcoholic Beverage Control Act of the State of California is unconstitutional in the particulars set forth in Paragraph V of the Bill in Equity herein,

and deny that said act is in violation of the rights of the plaintiffs, or any of them, in such particulars, and deny that the said act is unconstitutional and/or is in violation of the rights of plaintiffs, or any of them, in any particular whatsoever, but, on the contrary, aver that the said act is wholly and entirely within the provisions of the Constitution of the United States and each and all of the laws thereof, and does not in any manner whatsoever violate any of the rights of said plaintiffs, or any or either of them.

II

Deny that beer is a lawful and proper subject of interstate commerce, and on the contrary aver that the same is not a proper and lawful subject of interstate commerce, but that under the provisions of the XXI Amendment to the Constitution of the United States the same may be transported in interstate commerce only subject to such laws, statutes, regulations and restrictions as may be imposed by the several States.

III

Deny that plaintiffs, or any of them, are required by the said act to pay a fee of more than Fifty ($50.00) Dollars for a wholesalers license to engage in the business of selling and distributing beer manufactured and brewed outside the State or otherwise; deny that the products, or any of them, of the plaintiffs, or any or either of them, and/or the rights of such plaintiffs, or any or either thereof, to sell [fol. 93] and deal in the same is discriminated against solely on the basis of their origin without the State of California, or otherwise, or at all, and deny that any provisions of the said act are thereby, or in any manner, in violation of the provisions of the Constitution of the United States.

Admit that the first person in possession of beer brought into the State from without after the importation thereof has been completed is required to pay a license fee of Five Hundred dollars ($500.00), but aver that the same is a fee for possession only, and has nothing to do nor does it affect in any manner whatsoever the business or dealings in any way whatsoever with any such beer; aver that the business, or distribution, or sale or disposal of any beer within the State of California is regulated entirely under

the Wholesaler's License Fee in the amount of Fifty Dollars, ($50.00), and that the same pertains to any and all beer regardless of where manufactured, and does not discriminate against any beer imported from without the State.

IV

Deny that the said act, and the regulations issued thereunder, or either of them, or any part or portion of either of them, are unconstitutional and void, or unconstitutional or void because at any time whatsoever they were, or are, contrary to or in violation of Section 8 of Article I, and of Section 2 of Article IV, and of the Fourteenth Amendment to the Constitution of the United States, or either or any thereof, or either or any part or portion of the same; and deny that they were or are contrary to and in violation of any of the laws of the United States, and of any part or portion of the Constitution of the United States, or any or either thereof, but, on the contrary, aver that the said act and the regulations issued thereunder, and each of them, are wholly and entirely within the provisions of the Consti- [fol. 94] tution and laws of the United States in each and every particular.

V

Deny that the matter in controversy herein exceeds the sum or value of Three Thousand Dollars ($3,000.00), but on the contrary aver that the same does not exceed the sum or value of Five Hundred Dollars ($500.00).

Deny that the jurisdiction of this Court is invoked because and by reason of any Federal question involved, and on the contrary aver that no Federal question whatever is involved in this controversy and that the jurisdiction of this Court is not invoked thereby.

Deny that there is involved in this controversy the right of plaintiffs, or any or either of them, to buy, transport and import, or any thereof, in interstate commerce or otherwise, and to sell and deliver, or to sell or deliver to purchasers in this State beer manufactured outside of this State free from any alleged unlawful, discriminatory provisions and onerous burdens, or any or either thereof, imposed by the Alcoholic Beverage Control Act;

Deny that the rights of plaintiffs, or any or either of them, to buy, transport or import, or any or either thereof,

in interstate commerce or otherwise, and to sell and deliver or sell or deliver to purchasers in the State of California, beer manufactured outside of said State, free from any alleged unlawful burdens and discriminatory provisions of the said Act, is of a value as to each or any of them in excess of the sum of Three thousand dollars ($3,000.00) or any other sum in excess of Five hundred dollars ($500.00); aver that any such alleged rights of plaintiffs, or any or either of them, is not involved herein and that the entire matter in controversy herein is the Five hundred dollars [fol. 95] ($500.00) importer's tax or license fee.

VI

Deny that under the terms of said act the plaintiff, Young's Market Company, is required to procure from the State Board of Equalization, an importer's license for each of the three points in this State where said plaintiff maintains a place of business, but aver that said plaintiff is only required to obtain an importer's license in the event that such plaintiff is the person first in possession of beer within this State after the act of importation is completed, and that such license must be obtained for each place at which the said plaintiff becomes first in possession thereof; deny that such plaintiff under the said Act may not cause beer to be shipped from Milwaukee, Wisconsin, or from any other point outside of the State, to any of its places of business within this State without first obtaining such importer's license, and aver that it may cause beer to be shipped from any point without the State to any point within the State without in any manner being required to obtain any license of any kind whatsoever; deny.

[fol. 96]

VII

Deny that under the terms of said Act plaintiff, Simon Levi Company, Ltd., is required to procure from the State Board of Equalization an importer's license for each of the twelve points in the State of California where said plaintiff maintains a place of business and deny that said plaintiff is thereby or in any other manner whatsoever, taxed an unlawful and discriminatory or unlawful or discriminatory tax under the terms of said act, in the sum of $6,000.00 or in any other sum whatsoever, but on the contrary aver that

said plaintiff is only required to procure an importer's license in the event that said plaintiff first comes into possession of beer from without the State of California after the importation thereof has been completed, and then only at each of the points in this State where the plaintiff may first come into possession thereof; deny that said plaintiff by reason of said act may not cause beer to be shipped by anyone whatsoever from any point whatsoever without the State of California to any point whatsoever within the State of California, without obtaining from the State Board of Equalization an importer's license fee or any other license whatsoever; aver that the freight rate and transportation charges on beer imported from without the State to any point within the State, and then from there to different points of destination within this State, are no greater than the similar freight charges and transportation charges on beer from the point of manufacture within the State to the similar different points of destination in such State.

VIII

Defendants hereby make the same denial and averments as to each of the plaintiffs, Haas Baruch & Company, W. L. Koerber and Geo. P. and Geo. S. Higgins as they have [fol. 97] heretofore made as to the plaintiffs, Young's Market Company and Simon Levi Company, Ltd., and repeat the same herein as if specifically set forth.

IX

Deny that any railroad carriers and transportation companies, or any or either of them whatsoever, have been instructed by any defendants herein not to deliver shipments of beer to plaintiffs, or any of them, and deny that any defendant herein has warned any railroad carrier or transportation company whatsoever that the delivering of any shipment of beer to plaintiffs, or any of them, at their several places of business, or elsewhere within this State, would be a violation of law until said plaintiffs should have acquired their importer's license and that they would be prosecuted therefor and such transportation prevented.

X

Deny that imposition of the importer's license as provided for in said act is a direct charge upon the beer so

imported, and upon the prices at which the same may be sold in this State; deny that the same is an unfair discrimination and charge against such beer in favor of beer manufactured within this State; deny that any investment whatsoever of the plaintiffs, or either of them, will be greatly depreciated or depreciated at all and rendered valueless if said beer importer's license of $500.00 is not declared unconstitutional and/or invalid; deny that said plaintiffs, or either of them, will be prevented from competing in the sale and distribution of beer imported from without the State with the beer manufactured in this State, and deny that said plaintiffs, or either of them, will be excluded in any way whatsoever from the sale and distribution of such imported beer; deny that any business whatsoever of said [fol. 98] plaintiffs, or either of them, will be impaired in any way whatsoever by reason of any provisions or conditions of the said act; and deny that plaintiffs, or either of them, will in any manner whatsoever thereby be deprived of any property whatsoever without due process of law, or otherwise or at all; deny that the enforcement of any of the terms of said Act will result in loss and damage irreparable or otherwise or at all to these plaintiffs, or any of them.

[fol. 99] XI

Deny that by reason of the said act, or any part or portion thereof, any beer whatsoever imported from without the State of California is discriminated against in favor of beer manufactured within said State, but, on the contrary, aver that beer imported from without the State of California is only subject after arrival within said State to an importer's license fee of $500.00, whereas beer manufactured within said State is subject to a manufacturer's license of $750.00, and aver that the cost of shipment of such beer from any point within the State of California where it first comes into possession of such importer is no greater to the several points of destination than the shipment thereof from the factory where the beer manufactured within said State is made to the several points of destination thereof; deny that plaintiffs, or either of them, will suffer any irreparable damage and loss of any kind or nature whatsoever by reason of any of the provisions of said act, and aver that the most damage that can be suf-

fered by said plaintiffs, or either of them, is the amount of said importer's license fee, to-wit, the sum of $500.00; deny that plaintiffs, or either of them, are without any plain, adequate or speedy remedy at law in the premises; and deny that plaintiffs, or either of them, can only be protected in the enjoyment of their property and rights by reason of the injunctive processes of this court.

As and for a Further Return to said Order to Show Cause, Restraining Order, and Application for Interlocutory Injunction, said defendants, and each of them, state:

[fol. 100] I

That no valid cause of action in equity exists against said defendants or any or either of them in favor of plaintiffs or any or either of them, and that it appears from the said bill in equity that there is insufficiency of fact to constitute any such valid cause of action in equity, and that such bill in equity does not state facts sufficient to constitute a cause of action of any kind.

II

That said bill in equity does not show that this Court has jurisdiction by reason of the amount involved and that, further, the same shows upon its face that it does not have jurisdiction by reason of the amount involved, and that the said amount involved, as shown by said bill, is less than the amount provided and required by statute.

III

That said bill of equity does not show that this Court has jurisdiction by reason of any federal question involved and, further, that said bill shows upon its face that no federal questions are involved, and that the alleged federal questions mentioned therein are frivolous and unsubstantial.

IV

That this Court is without jurisdiction under any section of the Judicial Code or otherwise, or at all, to entertain the said bill in equity and/or to grant the relief prayed for therein.

V

That said bill in equity does not, nor do any of the allegations therein contained, entitle plaintiffs, or any of them, to relief in equity.

[fols. 101 & 102] VI

That it is not shown by said bill in equity that the plaintiffs, or any of them, will suffer irreparable injury by reason of any of the matters and things in said bill contained or alleged.

Wherefore, having made full and complete return, the said defendants, and each of them, respectfully pray this honorable Court to make, render and enter its order dissolving the restraining order heretofore made and entered herein, and refusing to grant to said plaintiffs, or either of them, any temporary or interlocutory injunction herein; and for such other and further relief as to this honorable Court shall be meet in the premises.

U. S. Webb, Attorney General, by Eugene M. Elson, Walter L. Bowers, Deputies Attorney General, Attorneys for Defendants.

[fol. 103] IN UNITED STATES DISTRICT COURT

[Title omitted]

STATEMENT OF EVIDENCE ON APPEAL—Filed March 31, 1936

This cause came on regularly to be heard before the three-judge court organized under the provisions of Section 380 of the United States Codes Annotated, the Honorable Curtis D. Wilbur, Judge of the United States Circuit Court of Appeals, Ninth Circuit, and the Honorables Harry Hollzer and Albert Lee Stephens, Judges of the United States District Court, Southern District of California, Central Division, Judges of said court, on the 4th day of September, 1935, in the courtrooms of the above entitled court, as theretofore designated by plaintiffs in a notice of said hearing, upon the application of plaintiffs for interlocutory injunction and the order directing the defendants to show cause before said court on plaintiffs' application for interlocutory injunction, and upon the re-

turn of defendants to said order to show cause, restraining order and application for interlocutory injunction and the motion of defendants to dismiss plaintiffs' bill in equity; and thereupon the following stipulations were made by plaintiffs and defendants, through their respective counsel of record, in open court: That plaintiffs' application for temporary injunction be heard upon plaintiffs' bill of complaint and the defendants' return to the order to show [fol. 104] cause, verification of such return being waived by plaintiffs, and it being likewise stipulated that further proof, hearing and argument upon plaintiffs' prayer for a permanent injunction be waived by the parties, and that the decree of the court entered upon this hearing should be a final disposition of this cause without the necessity of further hearing or proof upon the allegations of said bill; it being further stipulated that the issues for the determination of this Court are of law and not of fact, the said defendants conceding that the allegations of plaintiffs' complaint having to do with or referring to the jurisdiction of this court with respect to the fact that the plaintiff, Simon Levi Company, Ltd., a corporation, has been in the past and is now operating twelve separate warehouses, at each of which warehouses it has been in the habit of and is desirous of continuing in the future to import beer from outside of the State of California, and that under the provisions of the Alcoholic Beverage Control Act of the State of California said plaintiff would be required to obtain a separate beer importer's license for each of said warehouses, and pay annually, pursuant to said act, $500 for each of said twelve warehouses, or a total of $6,000, and that each of the remaining plaintiffs would be required to pay annually $500 for each separate warehouse maintained by such plaintiff, as alleged in the complaint, are true; that transportation charges from the point of manufacture of plaintiffs' products, direct to plaintiffs' several warehouses, are less than transportation charges to one central warehouse operated by each plaintiff, and reshipment therefrom to other points of distribution; that defendants have threatened to, and unless they are enjoined from so doing, will enforce all of the provisions of the Alcoholic Beverage Control Act of the State of California, against these plaintiffs and others similarly situated, including the provisions of said Act attacked herein by plaintiffs.

Whereupon the cause was argued and submitted to the court for its decision.

[fols. 105 & 106] It is hereby stipulated between plaintiffs and defendants, by and through their respective counsel of record, that the foregoing may be settled as the statement of evidence herein, pursuant to Equity Rule 75b.

Edwin A. Meserve, M. J. Donnelly, Baldwin Robertson, William Larrabee, and Meserve Mumper. Hughes & Robertson, by Baldwin Robertson, Attorneys for Plaintiffs and Appellees. U. S. Webb, Attorney General, by Walter Bowers, Deputy.

ORDER

The foregoing statement of evidence is hereby allowed, settled and approved, and ordered filed as the statement of evidence to be included in the record on appeal in the above entitled cause, as provided by Equity Rule 75b.

Dated, Los Angeles, California, this 17th day of March, 1936.

Hollzer, Judge.

[File endorsement omitted.]

[fol. 107] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. Eq. 736-H

YOUNG'S MARKET COMPANY, a Corporation, et al., Plaintiffs,

vs.

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA, et al., Defendants

OPINION—Filed Sept. 21, 1935

Plaintiffs bring this suit both on their own behalf and also for the benefit of all others similarly situated, to enjoin the enforcement of certain provisions of a statute recently enacted by the Legislature of the State of California, and known as the "Alcoholic Beverage Control Act."

The provisions hereunder attack impose a "beer importer's" license tax of $500.00 per year, define an "importer" as "every person who, in the case of alcoholic beverages brought into this State from outside of this State, is the first in possession thereof in this State after the act of importation is completed," also empower certain State officials to collect this tax, and to institute proceedings, civil and criminal, for any failure to pay such license tax, authorize the imposition of penalties for such failure, also empower certain State officials to seize and dispose of the property of the beer importer who fails to pay such license tax, also prohibit common and private carriers from delivering imported beer to any importer failing to pay such license tax. These provisions further require the payment of a like tax for each of the premises of any busi- [fol. 108] ness establishment having more than one location.

Upon commencement of this suit an order was issued, directing the defendant officials to show cause why the enforcement of the above mentioned provisions of the Act should not be enjoined and at the same time a temporary restraining order was issued.

The defendants have responded by interposing a motion to dismiss and, in addition, have filed a pleading which has been denominated as a return to the order to show cause.

At the hearing, counsel stipulated that the application for an injunction pendente lite and also the cause on its merits be submitted on the pleadings. In view of the statements made by the counsel at such hearing, we have concluded that the material allegations of fact set forth in the bill of complaint are not in *in* controversy and that the only issues raised by the return to the order to show cause are issues of law.

For more than a year past each of the plaintiffs has been, and still is, engaged in the business of importing beer into this State from either Wisconsin or Missouri.

In addition to the provisions hereinbefore noted, the statute in question prohibits any person engaging in business as a broker, jobber or wholesale merchant, dealing in alcoholic beverages, unless he shall have secured a license so to do from the defendant State Board of Equalization, and also prescribes an anuual license tax of $50.00 for such

license to sell beer at wholesale. A like charge is made for each separate establishment maintained by such wholesaler.

[fol. 109] All of the plaintiffs are "wholesalers" of beer and have secured the requisite licenses to engage in such business in this State.

It is conceded that, under this statute, a person who engages in business as a "wholesaler" of beer manufactured in California pays annually only a fifty dollar license tax for each establishment maintained by him in this State for that purpose, whereas a competing "wholesaler" of beer which he imports into this State pays a like charge, and in addition, is required to pay a further license tax of $500 for each establishment maintained by him for the receipt and possession of such imported beer.

One of the plaintiffs maintains, in each of twelve different cities in this State, a separate establishment to which it imports beer from Wisconsin, and for each of which premises it holds the requisite "wholesaler's" license to sell beer.

The plaintiffs, and others engaged in the business of importing beer into this State and similarly situated to them, have refused to apply for and obtain an importer's license for the various places of business at which they import and receive beer.

The defendants threaten, and unless enjoined from so doing will proceed, to enforce against plaintiffs and others similarly situated all of the provisions of said Act here under attack.

Plaintiffs contend that the provisions of the statute, the enforcement of which they here seek to enjoin, violate the commerce clause (Section 8, Article 1) and the equal protection clause (Section 1, Article XIV) of the Constitution of the United States.

[fol. 110] Defendants assert that "since the adoption of the Twenty-first Amendment to the United States Constitution, neither the commerce clause nor the equal protection clause of the United States Constitution applies to intoxicating liquors". In addition, defendants maintain that the act in question constitutes a proper exercise of its police power by the State.

With respect to the first ground of the defense interposed herein, a similar contention was raised and held

untenable in the recent case of Joseph Triner Corporation v. Arundel, et al., by the United States District Court in Minnesota, in a decision rendered by a three-judge court on June 29, 1935 (11 Fed. Supp. 145). Upon this point, the Court there said:

"With the contention that by this language it was intended that intoxicating liquors should be excepted from the provisions of the Commerce Clause and other provisions of the Constitution of the United States, we are unable to agree. The purpose of the provision referred to was to make it impossible for Congress to permit the transportation or importation into any State, Territory, or possession of the United States of intoxicating liquors in violation of the laws of the State, Territory or possession. In other words, the provision left the States, Territories and possessions free to determine to what extent, if at all, intoxicating liquor should be a lawful subject of commerce within their limits."

We are convinced that the foregoing statement is a correct construction of the 21st Amendment in its application to a state of facts such as we have in the case before us.

Passing now to a consideration of the remaining defense interposed herein, it is contended that even though it be held that, once the State permits the traffic in liquors within its borders, the requirements of the commerce clause as well as the equal protection clause of the 14th Amendment must be adhered to, nevertheless the provisions of the [fol. 111] law in question represent merely the exercise of the State's police power. In support of this contention it is urged:

1. "The fee imposed upon the importer in the instant case is a fee imposed for the privilege of receiving and possessing the beer brought in—imported from other States. * * * When the beer is delivered by the carriers to the plaintiffs at their respective places of business, the act of importation at that instant is completed, and the beer cases to be a subject of interstate commerce."

Accordingly, it is argued that the statute does not contravene the commerce clause of the Federal Constitution.

2. Finally, it is claimed that under this statute importers are a class distinct from others engaged in the liquor busi-

ness; that the State has set up a comprehensive system of licensing the various types of businesses arising in connection with the liquor traffic; that the license fee involved might be said to be imposed for the purpose of placing foreign beer on a parity with domestic brewers insofar as the amount of license fee for marketing the product is concerned; and accordingly it is urged that the statute does not effect a discrimination in violation of the equal protection clause of the 14th Amendment.

These two contentions may be disposed of together. As pointed out in the case of Darnell & Son v. Memphis, 208 U. S. 113, at pages 119 and 120:

"* * * while it is undoubted that it has been settled that where property which has moved in the channels of interstate commerce is at rest within a State and has become commingled with the mass of property therein, it may be taxed by such State without thereby imposing a direct burden upon interstate commerce, that doctrine, as expounded in the decided cases, including those relied upon by the court below, has always expressly excluded the conception that a State could, without directly burdening interstate commerce, discriminate against such property by imposing upon it a burden of taxation greater than that levied upon domestic property of a like nature."

[fol. 112] Again in the same case, the Court quoted with approval the following from the decision in Guy v. Baltimore, 100 U. S. 434:

"In view of these and other decisions of this court, it must be regarded as settled that no State can, consistently with the Federal Constitution, impose upon the products of other States, brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other States, more onerous public burdens or taxes than it imposes upon the like products of its own territory. If this were not so, it is easy to perceive how the power of Congress to regulate commerce with foreign nations and among the several States could be practically annulled, and the equality of commercial privileges secured by the Federal Constitution to citizens of the several States be materially abridged and impaired."

Among other cases relied upon as a basis for the decision in the Darnal case was that of Webber v. Virginia, 103 U. S. 344. There the Court held a license statute of Virginia to be a regulation of commerce and invalid because it required that the agent for the sale of articles manufactured in other States must first obtain a license for which he was required to pay a tax for each county in which he sold or offered to sell them, while the agent for the sale of articles manufactured in that State, if acting for the manufacturer, was not required to obtain a license or pay any license tax.

Another citation referred to with approval in the Darnell decision was the case of Walling v. Michigan, 116 U. S. 446, where the Court held an act of the latter State, which imposed a tax or duty on persons who, not having their principal place of business within the State, engaged in the business of selling or of soliciting the sale of certain described liquors, to be shipped into the State, to be repugnant to the commerce clause, as being "a discriminating tax levied against persons for selling goods brought into [fol. 113] the State from other States or countries."

None of the cases cited by defendant's counsel sustains the position they have taken in the present suit. The case of American Steel and Wire Co. v. Speed, 192 U. S. 500, was considered in the Darnell decision. It was there pointed out that the case cited did not hold that, after goods have been imported into a State, the sale of such products may be regulated by State legislation which discriminates against the same and in favor of the same kind of goods produced within the State.

In Rosenberger v. Pacific Express Co., 241 U. S. 48, also cited by defendants' counsel, the Court held that a Texas statute, imposing special licenses on express companies maintaining officers for C. O. D. shipments of intoxicating liquors, was unconstitutional so far as interstate shipments were concerned.

In Evansville Brewing Association v. Excise Commission, 225 Federal, 204, while it was there decided that a certain Alabama statute was not discriminatory so far as the complainant in that case was concerned, the Court also said (page 209):

"The exaction of an additional license of the Alabama wholesale dealer for the privilege of selling foreign made

beer, when a like license is not exacted for the sale of beer of domestic manufacture, is an evident discrimination against the seller of the foreign made beer. [Citing cases.] If the Alabama wholesale dealer was the complainant, and there was no more in the case, his right to relief would be clear. However, in this case the complainant is the foreign brewer, and the question of discrimination is therefore to be determined with reference to it rather than to the local dealer."

The most recent expression of the Supreme Court relative to the question here under consideration is to be [fol. 114] found in the case of Baldwin et al. v. Selig, Inc., 294 U. S. 511, where the Court, on page 527, declared:

"* * * What is ultimate is the principle that one State in its dealings with another may not place itself in a position of economic isolation. Formulas and catchwords are subordinate to this overmastering requirement. Neither the power to tax nor the police power may be used by the State of destination with the aim and effect of establishing an economic barrier against competition with the products of another State or the labor of its residents. Restrictions so contrived are an unreasonable clog upon the mobility of commerce. They set up what is equivalent to a rampart of customs duties designed to neutralize advantages belonging to the place of origin. They are thus hostile in conception as well as burdensome in result. The form of the packages in such circumstances is immaterial, whether they are original or broken. The importer must be free from imposts framed for the very purpose of suppressing competition from without and leading inescapably to the suppression so intended."

An examination of the provisions of the statute involved in the case before us convinces us that this law discriminates between the wholesalers of beer imported into California and the wholesalers of beer manufactured in this State, to the detriment of the former.

While, as pointed out in the Joseph Triner case, supra, the equal protection clause of the Constitution does not prevent the State from adjusting its legislation to differences in situation, or forbid classification in that connec-

tion, "it does require that the classification be not arbitrary but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation." (See cases therein cited.)

In the Joseph Triner case the Court held invalid, as being in violation of the equal protection clause, a statute of Minnesota which prohibited the sale of liquor imported into that State in a finished condition unless the brand of such liquor had been registered in the United States [fols. 115 &116] Patent Office, and which statute imposed no similar restriction with respect to liquor manufactured in that State. There the Court said:

"We are unable to see any justification for making a distinction between those who are permitted to manufacture or process liquor within the State and those who are permitted to import liquor into the State, with respect to the use of registered or unregistered brands. If the registration of brands of liquor in the Patent Office has, as is contended, some tendency to protect the public from misbranded liquor or to place responsibility for liquor sold within the State, there seems no logical reason for making the law apply only to those who import the finished product. Under Chapter 390, the Minnesota manufacturer, processor or rectifier can sell his liquor to the public under an unregistered brand, whereas the Joseph Triner Corporation and all others similarly situated are prohibited from selling liquor similar in all respects, unless their brands are registered in the Patent Office."

These views, with which we are in accord, impel us to say that there is even less justification for making the distinction, created by the provisions of the statute here in question, between the wholesalers of beer manufactured in California and those who sell beer imported into the State, with respect to the amount charged for the privilege of selling beer. These provisions are in the nature of an economic barrier attempted to be established by legislation against competition with beer imported from other States—legislation, however, which contravenes the commerce clause and the equal protection clause of the Constitution of the United States and, therefore, is invalid.

A final injunction will issue in conformity with this opinion.

Dated this 20 day of September, 1935.

Curtis D. Wilbur, U. S. Cricuit Judge; —— Hollizer, U. S. District Judge; Albert Lee Stephens, U. S. District Judge.

[fol. 117] IN UNITED STATES DISTRICT COURT

[Title omitted]

Special Findings of Fact and Conclusions of Law under Equity Rule 70½—Filed Oct. 9, 1935

The matter of the application of plaintiffs herein for an interlocutory injunction having come on regularly for hearing on the 4th day of September, 1935, at the hour of ten o'clock A. M., in the courtroom of the Honorable Harry A. Hollzer, on the third floor of the Federal Building, Los Angeles, California, before the Honorable Curtis D. Wilbur, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, the Honorable Harry A. Hollzer, Judge of the District Court of the United States, for the Southern District of California, Central Division, and the Honorable Albert Lee Stephens, Judge of the District Court of the United States, for the Southern District of [fol. 118] California, Central Division, organized and sitting as a three-judge court under and by virtue of the provisions of Section 380 of the United States Code Annotated (Judicial Code, Section 266 as amended), for the hearing and determination of this cause, plaintiffs being represented and appearing by Baldwin Robertson and William Larrabee, of their counsel, and defendants, Board of Equalization of the State of California, John C. Corbett, Fred E. Stewart, R. E. Collins, Orfa Jean Shontz, Frank F. Merriam, Governor of the State of California, and U. S. Webb, being represented and appearing by their counsel, U. S. Webb, Attorney General of the State of California, by Eugene M. Elson and Walter L. Bowers, Esquires, and the motion of said defendants for a dismissal of plaintiffs' complaint having also come on for hearing at said time and place and having been heard, and it being stipulated and

agreed in open court by and between plaintiffs and said defendants, by and through their respective counsel of record, that plaintiffs' application for temporary injunction be heard upon plaintiffs' bill of complaint and the defendants' return to the order to show cause, verification of such return being waived by plaintiffs, and it being likewise stipulated that further proof, hearing and argument upon plaintiffs' prayer for a permanent injunction be waived by the parties, and that the decree of the court entered upon this hearing should be a final disposition of this cause without the necessity of further hearing or proof upon the allegations of said bill; it being further stipulated that the issues for the determination of this court are of law and not of fact, the said defendants conceding that the allegations of plaintiffs' complaint having to do with or referring to the jurisdiction of this court with respect to the fact that [fol. 119] the plaintiff Simon Levi Company, Ltd., a corporation, has been in the past and is now operating twelve separate warehouses, at each of which warehouses it has been in the habit of and is desirous of continuing in the future to import beer from outside of the State of California, and that under the provisions of the Alcoholic Beverage Control Act of the State of California said plaintiff would be required to obtain a separate beer importer's license for each of said warehouses, and pay annually, pursuant to said act, $500 for each of said twelve warehouses or a total of $6000, and that each of the remaining plaintiffs would be required to pay annually $500 for each separate warehouse maintained by such plaintiff as alleged in the complaint, also with respect to the truth and correctness of the allegations set forth in the remaining findings herein; and the court having announced its decision in favor of plaintiffs and against said defendants, the court being fully advised in the premises makes its findings of fact and conclusions of law as follows:

Findings of Fact

I

That plaintiff, Young's Market Company, a corporation, is now and at all times mentioned in these findings has been a corporation duly organized and existing under and by virtue of the laws of the State of California, with its prin-

cipal office for the transaction of business in the city of Los Angeles, county of Los Angeles, State of California; that plaintiff, Simon Levi Company, Ltd., a corporation, is now and at all times mentioned in these findings has been a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal office for the transaction of business in the city of Los [fol. 120] Angeles, county of Los Angeles, State of California; that plaintiff, Haas Baruch & Company, of San Diego, a corporation, is now and at all times mentioned in these findings has been a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal office for the transaction of business in the city of San Diego, county of San Diego, State of California; that plaintiff, W. L. Koerber, is now and at all times mentioned in these findings has been a citizen and resident of the city of San Jose, county of Santa Clara, State of California, engaged in business at the city of San Jose, California, under the fictitious firm-name and style of Koerber Distributing Company; that plaintiffs, George P. Higgins and George S. Higgins, are now and at all times mentioned in these findings have been citizens and residents of the city of Bakersfield, county of Kern, State of California, and are now and at all times mentioned in these findings have been co-partners doing business under the firm name and style of Higgins & Higgins.

II

That there are numerous other persons, corporations, firms and partnerships in the State of California engaged in businesses and occupations similar to that in which plaintiffs are engaged, each of whom has an interest in the subject matter of this litigation; that said persons, corporations, firms and partnerships are too numerous to be joined as parties plaintiff herein; that plaintiffs have properly brought this action for themselves and for the benefit of each and all of said persons, corporations, firms and partnerships similarly situated, with respect to the business of importing beer from outside the State of California; that this is a class or representative action, and [fol. 121] such others so similarly situated are entitled to the benefit of whatever relief plaintiffs may have or be entitled to.

III

That defendant, Frank F. Merriam, is the duly qualified, elected and acting Governor of the State of California, and is the executive head of the government of the State of California; that the Legislature of the State of California passed a certain statute entitled "An Act to license, regulate and control the manufacture, transportation, sale, purchase, possession and disposition of alcoholic beverages; to levy an excise tax on the sale of alcoholic beverages; to provide for the licensing of the manufacture, distribution and sale of alcoholic beverages; to prescribe penalties for the violation of this act; to make an appropriation for the enforcement of this act; to take effect immediately", which said act is known and designated as Senate Bill No. 919, Chapter 330, Statutes of 1935 of the State of California, and is hereinafter called "Alcoholic Beverage Control Act"; that said defendant, Frank F. Merriam, is a citizen and resident of the city of Long Beach, county of Los Angeles, State of California.

That defendant, State Board of Equalization of the State of California, is a board created and empowered to act under and by virtue of the provisions of the Constitution of the State of California and the statutes of the State of California relating and referring to the powers and constitution of such Board of Equalization of the State of California; that such board is the administrative board charged with various and sundry duties having to do with the assessment and collection of taxes and licenses within said State, and is particularly empowered and directed to en- [fol. 122] force each and all of the provisions of the Alcoholic Beverage Control Act, as more particularly appears from the provisions thereof; that defendants, John C. Corbett, Fred E. Stewart, R. E. Collins and Orfa Jean Shontz are, and each of them is, members of defendant, Board of Equalization of the State of California; that defendants, John C. Corbett, Fred E. Stewart, R. E. Collins and Orfa Jean Shontz, as members of said Board of Equalization of the State of California, are charged with the administration of such Alcoholic Beverage Control Act, and are citizens of and reside at the following locations: John C. Corbett, city of San Francisco, county of San Francisco, State of California; Fred E. Stewart, city of Oakland, county of Alameda, State of California; R. E. Collins, city

of Redding, county of Shasta, State of California; and Orfa Jean Shontz, city of Montrose, county of Los Angeles, State of California.

That defendant, U. S. Webb, is the duly elected, qualified and acting Attorney General of the State of California, and is the principal legal officer of said State and is charged with the enforcement of the laws of said State, and particularly is specifically charged with the enforcement of said Alcoholic Beverage Control Act.

IV

That said Alcoholic Beverage Control Act was enacted by the Legislature of the State of California, and was approved by defendant, Frank F. Merriam, as Governor of the State of California, on the 13th day of June, 1935; that according to the terms thereof the same became effective on the 1st day of July, 1935; that said Alcoholic Beverage Control Act is in words and figures as follows:

[fol. 123] (Hereat (pp. 6 to 50 inclusive of the Findings) the court set out in haec verba an exact copy of Senate Bill No. 919, Chapter 330, Statutes of 1935 of the State of California, as the same is set forth at large in the Jurisdictional Statement on Appeal.)

V

That under and by virtue of the provisions of said Alcoholic Beverage Control Act, and the authority purportedly conferred by it on defendants, State Board of Equalization of the State of California, and the individual members of said board hereinbefore named, said defendants adopted, promulgated and threaten to enforce certain rules and regulations governing traffic in alcoholic beverages, among which said rules and regulations is the following:

"Rule 9—Imports

(a) Importer's License Necessary.—The owner or purchaser of alcoholic beverages shipped into this State from outside this State must have an appropriate Importer's license for the premises at which such beverages first come to rest in this State after the act of importation is completed.

A licensee holding an importer's license for one premise may not have alcoholic beverages shipped to him from a point outside the State directly to another premise in this State for which he has not been issued an Importer's license.

Furthermore, the holder of an Importer's license may not take orders from wholesalers or retailers throughout the State and ship such beverages from outside the State direct to such wholesalers or retailers unless they hold appropriate Importers' licenses for each of the premises to which such beverages are consigned. Beverages may be shipped from points outside the State only to premises for which Importers' licenses have been issued. After the beverages have been delivered to the premises for which the consignee holds an Importer's license, he may, if he desires to do so, reship them to other premises for which appropriate wholesale or retail licenses have been issued.

(b) Carriers Must Deliver Only to Licensed Importers.—[fol. 124] No alcoholic beverages shall be transported into this State by any carrier, either common or private, unless consigned to a licensed importer. The carrier must obtain the receipt of such an importer for any beverages so transported, and if the carrier shall find that any shipment is consigned to, or intended for delivery to, anyone not a licensed importer, the beverages must not be delivered. In such case the carrier must immediately notify the board at Sacramento, giving full details as to the character of shipment, point of origin, destination, and names and addresses of consignor and consignee; no such shipment shall be released by the carrier, except upon written order of the board.

(c) Carriers Must Report Imports Monthly.—Every carrier, common or private, operating into this State in foreign or interstate commerce shall report to the board monthly, on forms to be obtained from the board, as to all consignments of alcoholic beverages originating outside this State and transported by such carrier to points within this State. Such reports must be filed at Sacramento not later than the fifteenth day of each month as to all consignments so transported during the calendar month previous, and must show character of shipment, point of origin, destination and names and addresses of consignor and consignee of each consignment.

(d) Mail Shipments Confined to Licensed Importers.—No alcoholic beverages shall be transported into this State by United States mail for delivery to anyone except a licensed importer. Postal authorities shall refuse delivery of any shipment of alcoholic beverages originating outside of this State unless the addressee can establish to their satisfaction that he is duly licensed by this board to receive such a shipment.

(e) Importer's License Does Not Authorize Sale.—Every licensed importer who proposes to bottle or prepare imported alcoholic beverages or to sell such beverages in this State must first obtain appropriate Manufacturer's and Wholesaler's or Retailer's licenses as provided in the Act. An Importer's license does not authorize bottling, preparation or resale of alcoholic beverages nor does any other license authorize importation of such beverages."

VI

That under the laws of the State of California, and in particular under and by virtue of the provisions of the Alcoholic Beverage Control Act, beer is recognized as a commodity which may be lawfully made, bought and sold [fol. 125] within the State of California; that the right to manufacture, possess and sell beer within the State of California is limited, restricted or prohibited only to the extent that the valid provisions of the Alcoholic Beverage Control Act limit, restrict or prohibit such manufacture, possession and sale; that the importation of beer into the State of California from points without the State of California is lawful and is restricted, limited or prohibited only to the extent that the valid provisions of the Alcoholic Beverage Control Act so limit, restrict or prohibit such importation.

VII

That the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of three thousand dollars ($3,000).

VIII

That the plaintiff, Young's Market Company, is now and has for more than one year last past been engaged in the business of the purchase and sale of beer at wholesale, and

cannot and does not engage in the manufacture of beer within the state of California, or elsewhere; that the said plaintiff in the operation of its business imports in interstate commerce beer manufactured and brewed by the Premier-Pabst Corporation, a corporation organized and existing under the laws of the State of Delaware, and engaged in the manufacture of beer in the State of Wisconsin, and that said plaintiff has built up and established a large and profitable trade in the sale of said products at wholesale in the cities of Los Angeles, Long Beach and San Diego, California; that said business amounts to a sum in excess of $400,000 annually; that said plaintiff maintains a warehouse and distribution facilities for sale and distribution [fol. 126] of the beer so purchased and imported by it at each of the places of business as aforesaid, and is the holder of valid subsisting beer wholesaler's licenses issued by the State Board of Equalization of the State of California, authorizing said plaintiff to sell beer at wholesale at each of said places; that the method under which said plaintiff has conducted its business of purchasing, importing, selling and distributing said beer so imported, and under which it desires to continue its business, is as follows: Said plaintiff, Young's Market Company, places an order with Premier-Pabst Sales Company for the shipment of beer manufactured in Wisconsin by the said Premier-Pabst Corporation, to said plaintiff f.o.b. cars, Milwaukee, Wisconsin, for delivery to said plaintiff at one of its aforesaid places of business; that pursuant to said order, Premier-Pabst Corporation ships, by a railroad common carrier, beer in carload lots from the brewery of Premier-Pabst Corporation in Milwaukee, Wisconsin, to said plaintiff for delivery by the carrier at one of the aforesaid places of business of said plaintiff in the State of California, where the same is received, unloaded and sold by said plaintiff in the course of its wholesale business conducted at said place.

That under the terms of said Alcoholic Beverage Control Act, Young's Market Company is required to procure from defendant, State Board of Equalization, an importer's license for each of the three points in the State of California whereat said plaintiff maintains a place of business for the importation of beer from outside the State of California, i.e., Los Angeles, Long Beach and San Diego, and said plaintiff is thereby taxed the sum of $1,500; that said

plaintiff, under the terms of said act, may not cause beer to be shipped by said Premier-Pabst Corporation from Mil-
[fol. 127] waukee, Wisconsin, or from any other point outside of the State of California, to any of its said three places of business for the importation of beer from outside the State of California, without obtaining from defendant said importer's license for such point; that the railroad freight rates and other transportation charges from Milwaukee, Wisconsin, direct to San Diego and direct to Long Beach are much less than the railroad freight rates and other transportation charges from Milwaukee, Wisconsin, to Los Angeles, plus the freight rate and other transportation charges from Los Angeles to San Diego or to Long Beach respectively. Accordingly, it has been this plaintiff's method of transacting business in the past, and this plaintiff desires to continue in the future to cause shipments of beer to be made from Milwaukee, Wisconsin, direct to its several places of business, without first having said shipment come to rest at its warehouse in Los Angeles.

IX

That plaintiff, Simon Levi Company Ltd., is now and has for more than one year last past been engaged in the business of the purchase and sale of beer at wholesale, and cannot and does not engage in the manufacture of beer within the State of California, or elsewhere; that the said plaintiff in the operation of its business imports in interstate commerce beer manufactured and brewed by the Jos. Schlitz Brewing Company in the city of Milwaukee, State of Wisconsin; that said business amounts to a sum in excess of $400,000 annually; that said Jos. Schlitz Brewing Company is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, and is engaged in the manufacture of beer in the city of Milwaukee, State of Wisconsin; that said plaintiff has built up and
[fol. 128] established a large and profitable trade in the sale of said product at wholesale in the cities of Los Angeles, Long Beach, San Diego, San Bernardino, Indio, El Centro, Needles, Winterhaven, Wilmington, Bakersfield, Fresno and Hanford, California; that said plaintiff maintains a warehouse and distribution facilities for sale and distribution of the beer so purchased and imported by it at each of the

places of said plaintiff's business as aforesaid, and is the holder of valid subsisting beer wholesaler's licenses issued by the State Board of Equalization of the State of California, authorizing said plaintiff to sell beer at wholesale at each of said places; that the method under which said plaintiff has conducted its business of purchasing, importing, selling and distributing said beer so imported, and under which it desires to continue its business, is as follows: The plaintiff, Simon Levi Company, Ltd., places an order with the Jos. Schlitz Brewing Company for the shipment of beer manufactured in Wisconsin by the said Jos. Schlitz Brewing Company to said plaintiff f.o.b. cars, Milwaukee, Wisconsin, for delivery to said plaintiff at one of its aforesaid places of business; that pursuant to said order, Jos. Schlitz Brewing Company ships, by a railroad common carrier, beer in carload lots from its brewery in Milwaukee, Wisconsin, to plaintiff for delivery by the carrier at one of the aforesaid places of business of said plaintiff in the State of California, where the same is received, unloaded and sold by said plaintiff in the course of its wholesale business conducted at said place.

That under the terms of the Alcoholic Beverage Control Act, Simon Levi Company, Ltd., is required to procure from defendant, State Board of Equalization an importer's [fol. 129] license for each of the twelve points in the State of California whereat said plaintiff maintains a place of business for the importation of beer from outside the State of California, i.e., Los Angeles, Indio, El Centro, Needles, Winterhaven, San Berhardino, Long Beach, Wilmington, San Diego, Bakersfield, Fresno and Hanford, and said plaintiff is thereby taxed the sum of $6,000; that said plaintiff, under the terms of said act, may not cause beer to be shipped by said Jos. Schlitz Brewing Company from Milwaukee, Wisconsin, or from any other point outside of the State of California, to any of its said twelve places of business for the importation of beer from outside the State of California, without obtaining from defendant said importer's license for such point; that the railroad freight rates and other transportation rates and charges from Milwaukee, Wisconsin, direct to such points, and the back-haul or diversion rate from Milwaukee, Wisconsin, to such points, are much less than the railroad freight rates or other transportation charges from Milwaukee, Wisconsin,

to Los Angeles, or to any of the other given points, plus the freight rate from Los Angeles, or such points, to any of the other points, respectively. Accordingly, it has been the method of transacting business of this plaintiff in the past, and this plaintiff desires to continue in the future to cause shipments of beer to be made from Milwaukee, Wisconsin, direct to its several places of business, or to divert such shipments to such places of business, or to utilize the privilege of a back-haul rate to such places of business, without first having said shipment come to rest at its warehouse in Los Angeles.

X

That plaintiff, Haas Baruch & Company, of San Diego, [fol. 130] is now and has for more than one year last past been engaged in the business of the purchase and sale of beer at wholesale, and cannot and does not engage in the manufacture of beer within the State of California, or elsewhere; that the said plaintiff in the operation of its business imports in interstate commerce beer manufactured and brewed by Anheuser-Busch, Incorporated, in the city of St. Louis, State of Missouri; that said Anheuser-Busch, Incorporated, is a corporation organized and existing under and by virtue of the laws of the state of Missouri, and is engaged in the manufacture of beer in the city of St. Louis, State of Missouri; that said plaintiff has built up and established a large and profitable trade in the sale of said product at wholesale in the city of San Diego, State of California; that said business amounts to a sum in excess of $25,000 annually; that said plaintiff maintains a warehouse and distribution facilities for the sale and distribution of the beer so imported by it at such place of said plaintiff's business as aforesaid, and is the holder of a valid subsisting beer wholesaler's license issued by defendant State Board of Equalization, authorizing said plaintiff to sell beer at wholesale at said place; that the method under which said plaintiff has conducted its business of importing, selling and distributing said beer so imported, and under which it desires to continue its business, is as follows: The plaintiff, Haas Baruch & Company, of San Diego, places an order with Anheuser-Busch, Incorporated, for the shipment of beer manufactured in Missouri by said Anheuser-Busch, Incorporated, to said plaintiff f.o.b. cars, St. Louis,

Missouri, for delivery to said plaintiff at its aforesaid place of business; that pursuant to said order, Anheuser-Busch, Incorporated, ships by a railroad common carrier, [fol. 131] beer in carload lots from its brewery in St. Louis, Missouri, to said plaintiff for delivery by the carrier at the aforesaid place of business of said plaintiff in the State of California, where the same is received, unloaded and sold by said plaintiff in the course of its wholesale business conducted at said place.

XI

That plaintiff, W. L. Koerber, is now and has for more than one year last past been engaged in the business of the purchase and sale of beer at wholesale, and cannot and does not engage in the manufacture of beer within the State of California, or elsewhere; that the said plaintiff in the operation of its business imports in interstate commerce beer manufactured and brewed by the Premier-Pabst Corporation, a corporation, at Milwaukee, Wisconsin, which said corporation is organized and existing under the laws of the State of Delaware, and engaged in the manufacture of beer in the State of Wisconsin, and that said plaintiff has built up and established a large and profitable trade, under the firm-name and style of Koerber Distributing Company, in the sale of said product at wholesale in the city of San Jose, State of California; that said plaintiff maintains a warehouse and distribution facilities for the sale and distribution of the beer so imported by him at San Jose, and is the holder of a valid subsisting beer wholesaler's license issued by defendant State Board of Equalization, authorizing said plaintiff to sell beer at wholesale at said place; that the method under which said plaintiff has conducted his business of importing, selling and distributing said beer so imported, and under which he desires to continue his business, is as follows: The plaintiff places an order with Premier-Pabst Corporation for the shipment of beer manu- [fol. 132] factured in Wisconsin by the said Premier-Pabst Corporation, to said plaintiff f.o.b. cars, Milwaukee, Wisconsin, for delivery to said plaintiff at San Jose, California; that pursuant to said order, Premier-Pabst Corporation ships by a railroad common carrier, beer in carload lots from the brewery of Premier-Pabst Corporation, in Milwaukee, Wisconsin, to said plaintiff for delivery by

the carrier at San Jose, California, where the same is received, unloaded, sold and distributed by plaintiff in the course of his wholesale business conducted at said place.

XII

That plaintiffs, George P. Higgins and George S. Higgins, are now and have for more than one year last past been engaged in the business of the purchase and sale of beer at wholesale, and cannot and do not engage in the manufacture of beer within the State of California, or elsewhere; that the said plaintiffs in the operation of their business import in interstate commerce beer manufactured and brewed by the Premier-Pabst Corporation, a corporation, at Milwaukee, Wisconsin, which said corporation is organized and existing under the laws of the State of Delaware, and engaged in the manufacture of beer in the State of Wisconsin, and that said plaintiffs have built up and established a large and profitable trade, under the firm-name and style of Higgins & Higgins, in the sale of said product at wholesale in the city of Bakersfield, State of California; that said plaintiffs maintain a warehouse and distribution facilities for the sale and distribution of the beer so imported by them at Bakersfield, California, and are the holders of a valid subsisting beer wholesaler's license issued by the State Board of Equalization of the State of California, authorizing said plaintiffs to sell beer [fol. 133] at wholesale at said place; that the method under which said plaintiffs have conducted their business of importing, selling and distributing said beer so imported, and under which they desire to continue their business, is as follows: The plaintiffs place an order with Premier-Pabst Corporation for the shipment of beer manufactured in Wisconsin by the said Premier-Pabst Corporation to said plaintiffs f.o.b. cars, Milwaukee, Wisconsin, for delivery to said plaintiffs at Bakersfield, California; that pursuant to said order, Premier-Pabst Corporation ships by a railroad common carrier, beer in carload lots from the brewery of Premier-Pabst Corporation in Milwaukee, Wisconsin, to said plaintiffs for delivery by the carrier at Bakersfield, California, where the same is received, unloaded, sold and distributed by plaintiffs in the course of their wholesale business conducted at said place.

XIII

That the right of plaintiffs to buy, transport and import in interstate commerce, and to sell and deliver to purchasers in the State of California, beer manufactured outside the State of California, free from the provisions of the Alcoholic Beverage Control Act relating to the so-called beer importer's license, is of a value as to each of them in excess of the sum of $3,000; that the value of the beer which each plaintiff has annually purchased, imported into and sold in the State of California, and which each will annually so buy, transport and import in interstate commerce into the State of California, upon being freed from such provisions, is as to each of plaintiffs greatly in excess of the sum of $25,000; that each of the plaintiffs, by reason of a great expenditure of money, by advertising and other means has developed and enjoys a large demand and sale [fol. 134] for beer manufactured outside the State of California; that in the State of California there exists a large demand on the part of numerous consumers and retail dealers for such beer so manufactured outside the State of California and sold and distributed in the State of California by plaintiffs and others similarly situated, and, but for the provisions of said Alcoholic Beverage Control Act relating to said so-called beer importer's license, each of the plaintiffs, and others similarly situated, could and would import and sell in the State of California a much greater amount than they now sell of beer manufactured outside the State of California.

XIV

That plaintiffs have ordered and intend to order in the future the shipment of beer brewed and manufactured outside of California, to the points as hereinabove stated to be shipped to their several warehouses and places of business in the State of California; that under the terms of the Alcoholic Beverage Control Act and of Rule 9, subdivision (a), promulgated thereunder and herinbefore set forth, plaintiffs and others similarly situated are required to obtain an importer's license for each of their several respective places of business, whereat plaintiffs import beer from outside the State of California.

XV

That there are approximately thirty-four breweries in the State of California and numerous wholesalers and distributors of beer brewed in the State of California which compete with plaintiffs and others similarly situated in the sale and distribution of beer in said State; that a large quantity of beer is brewed and manufactured in the State of California by said brewers, and said beer so manufactured in the State of California is competitive to the beer [fol. 135] manufactured in the State of Wisconsin and in the State of Missouri, as hereinabove alleged, and by plaintiffs and others similarly situated transported to California for sale in this State; that the prices at which beer so imported into the State of California may be sold at wholesale, as compared with prices at which the beer manufactured in the State of California may be sold at wholesale, is an item entering into the salability of such imported product; that the imposition of an importer's license at each of plaintiffs' said points of distribution and all such points of distribution belonging to others similarly situated is a direct charge upon the beer so imported and upon the prices at which said imported beer may be sold in the State of California, and is a discrimination and charge as against such beer so manufactured outside of the State of California and in favor of the beer manufactured within the State of California. That plaintiffs and others similarly situated have at their various branch stores and warehouses, as aforesaid, large sums of capital invested and used in the business heretofore conducted by them of distributing beer which they have imported from outside said state, which said investments will be greatly depreciated and rendered valueless if the provisions of the Alcoholic Beverage Control Act relating to said beer importer's license be enforced; inasmuch as the license fee of $500 imposed upon each place of business heretofore mentioned owned by plaintiffs and upon each such place of business owned by others similarly situated is an additional charge to plaintiffs and others similarly situated and an additional cost of said beer, plaintiffs and others similarly situated will be prevented from competing in the sale and distribution of beer, with beer manufactured in the State of California as to which no such license is required, and these

plaintiffs and others similarly situated will be forever excluded from the sale of imported beer at many of their [fol. 136] places of distribution, their business will be seriously impaired, their money, efforts and time in advertising their said businesses and the said imported beer and in creating a custom therefor will be lost, and plaintiffs and others similarly situated will thereby be deprived of their property, and the loss and damage that will be suffered by these plaintiffs and others similarly situated if said act, in so far as it refers to beer importers' licenses, be enforced, will be irreparable. Relying upon the provisions of the Constitution of the United States, plaintiffs and others engaged in the business of importing beer into the State of California, and similarly situated to the plaintiffs, have refused to apply for and obtain an importer's license for each of the various places of business at which plaintiffs and others so similarly situated import and receive beer; that defendants and each of them have threatened to, and unless restrained and enjoined by this court from so doing will enforce against plaintiffs and others similarly situated each and all of the provisions of said Alcoholic Beverage Control Act including the provisions thereof relating to beer importers' licenses.

XVI

That by reason of the favored position in which manufacturers of and wholesalers and dealers in beer manufactured in the State of California are placed under the provisions of said Act, plaintiffs and others similarly situated cannot sell beer so imported as hereinbefore set forth in the State of California at a reasonable or other profit, and, therefore, their business, to the extent hereinbefore mentioned, will be seriously impaired if not actually lost and destroyed; that the damage and loss which will be so suffered by plaintiffs and others similarly situated if the pro- [fol. 137] visions of said act relating to beer importers' licenses are enforced against them will be irreparable; that plaintiffs and others similarly situated are without any plain, adequate or speedy remedy at law in the premises and it is only by aid of the injunctive processes of this court that plaintiffs and others similarly situated can be fully protected in the enjoyment of their property and

rights; that the granting of a permanent injunction by this court against the enforcement of the provisions of the said Alcoholic Beverage Control Act relating to beer importers' licenses will prevent a multiplicity of suits and prosecutions which will arise in the event of any attempt to enforce the same; that the questions herein involved can only be determined by a court of equity in a proceeding of this nature.

Upon the foregoing findings of fact the court now makes and enters its conclusions of law as follows:

[fol. 138] CONCLUSIONS OF LAW

1st. That there exists in this suit the requisite amount in controversy for the jurisdiction of this court; that the questions involved herein arise under the Constitution of the United States; that this court has jurisdiction hereof, and that the jurisdiction of this court in equity is properly invoked.

2nd. That that certain act entitled "An Act to license, regulate and control the manufacture, transportation, sale, purchase, possession and disposition of alcoholic beverages; to levy an excise tax on the sale of alcoholic beverages; to provide for the licensing of the manufacture, distribution and sale of alcoholic beverages; to prescribe penalties for the violation of this act; to make an appropriation for the enforcement of this act; to take effect immediately, which said act is known and designated as Senate Bill No. 919, Chapter 330, Statutes of 1935, of the State of California, and is hereinafter denominated "Alcoholic Beverage Control Act," is invalid, void and unconstitutional in the particulars hereinafter stated and in so far as it contains the following provisions:

(1) Section 2, subsection (k) thereof, which reads:

"'Importer' means every person who, in the case of alcoholic beverages brought into this State from outside of this State, is the first in possession thereof within this State after the act of importation is completed."

in so far as said subsection refers to a person who imports, receives or possesses beer brought into the State of California from outside said State.

(2) Section 3 thereof, which reads:

"On and after July 1, 1935, no person shall perform any act or acts which would constitute such person a manufacturer, rectifier, importer, wholesaler, or retailer of any [fol. 139] alcoholic beverage within the meaning of this act or shall package, label or sell any alcoholic beverage unless such person is authorized to do so by a license duly issued pursuant to the provisions of this act, or pursuant to the provisions of the State Liquor Control Act, Chapter 658, Statutes of 1933. Any person violating any provision of this section shall be guilty of a misdemeanor."

in so far as said section applies or refers to a beer importer's license or requires a beer importer's license of a person who imports, receives or possesses beer brought into the State of California from outside said State.

(3) That portion of Section 5 thereof reading as follows:

"The following are the types of licenses to be issued under this act and the annual fees to be charged therefor:

* * * * * * *

8. Beer importers license $500.00 per year

* * * * * * *"

in so far as it refers to "beer importers' license" and the fee to be charged therefor.

(4) That portion of Section 6 thereof reading as follows:

"Except as otherwise provided in this act and subject to the provisions of section 22 of Article XX of the Constitution, the licenses provided for in the preceding section shall authorize the person to whom issued to exercise the following rights and privileges and no others at the premises for which issued during the year for which issued.

* * * * * * *

(d) Any importer's license authorizes the person to whom issued to become an importer of alcoholic beverages specified in the license and to export such alcoholic beverage.

* * * * * * *"

in so far as it refers to a person who imports, receives or possesses beer brought into the State of California from outside said State.

(5) That portion of Section 7 thereof reading as follows:

[fol. 140] "Each license issued under this act shall be issued to a specific person, and * * * shall be issued for a specific location, the principal address of which shall be indicated on the license. Separate licenses shall be issued for each of the premises of any business establishment having more than one location.

* * * * * * *

Each license issued under this act is separate and distinct, shall be nontransferable from one person to another, and shall be transferable from the premises for which issued only as may be permitted by the board, upon payment of a transfer fee of five dollars for each license.

* * * * * * *"

in so far as it applies to or refers to a beer importer's license for a person who is the first in possession of beer brought into the State of California from outside said State.

(6) Section 49 thereof, which reads:

"Common or private carriers shall transport alcoholic beverages into the State only when such alcoholic beverages are to be consigned to a licensed importer. The carrier must obtain the receipt of such importer for the alcoholic beverage so transported and delivered and, if the consignee refuses to give a receipt and show his importer's license to the carrier, the carrier shall be relieved of all responsibility for delivering said alcoholic beverage. Where the consignee is not a licensed importer the carrier shall immediately notify the board at Sacramento, giving full details as to the character of shipment, point of origin, destination, and address of the consignor and consignee and within ten days such alcoholic beverage shall be summarily forfeited to the State of California and shall be turned over to the board for sale at public auction."

in so far as it refers to the transportation, importation, carriage or delivery of any beer into the State of California from outside said State, or the duties of any carrier in respect thereto, and in so far as it purports to provide for the forfeiture of any beer.

(7) Sections 10 and 11 of said act in so far as said sections refer to a beer importer's license for a person [fol. 141] who imports, receives or possesses beer brought into the State of California from outside said State.

(8) Section 31 of said act, in so far as said section applies to beer importers' licenses, or the license fee therefor.

3rd. That subdivisions (a), (b), (d) and (e) of Rule 9, promulgated by the defendant State Board of Equalization of the State of California, under and by virtue of the terms of such Alcoholic Beverage Control Act, which read as follows:

"(a) Importer's License Necessary.—The owner or purchaser of alcoholic beverages shipped into this State from outside this State must have an appropriate Importer's license for the premises at which such beverages first come to rest in this State after the act of importation is completed.

A licensee holding an importer's license for one premise may not have alcoholic beverages shipped to him from a point outside the State directly to another premise in this State for which he has not been issued an Importer's license.

Furthermore, the holder of an Importer's license may not take orders from wholesalers or retailers throughout the State and ship such beverages from outside the State direct to such wholesalers or retailers unless they hold appropriate Importers' licenses for each of the premises to which such beverages are consigned. Beverages may be shipped from points outside the State only to premises for which Importers' licenses have been issued. After the beverages have been delivered to the premises for which the consignee holds an Importer's license, he may, if he desires to do so, reship them to other premises for which

appropriate wholesale or retail licenses have been issued.

(b) Carriers Must Deliver Only to Licensed Importers.—No alcoholic beverages shall be transported into this State by any carrier, either common or private, unless consigned to a licensed importer. The carrier must obtain the receipt of such an importer for any beverages so transported, and if the carrier shall find that any shipment is consigned to, or intended for delivery to, anyone not a licensed importer, the beverages must not be delivered. In such case the car- [fol. 142] rier must immediately notify the board at Sacramento, giving full details as to the character of shipment, point of origin, destination, and names and addresses of consignor and consignee; no such shipment shall be released by the carrier, except upon written order of the board.

(d) Mail Shipments Confined to Licensed Importers.—No alcoholic beverages shall be transported into this State by United States mail for delivery to anyone except a licensed importer. Postal authorities shall refuse delivery of any shipment of alcoholic beverages originating outside of this State unless the addressee can establish to their satisfaction that he is duly licensed by this board to receive such a shipment.

(e) Importer's License Does Not Authorize Sale.—Every licensed importer who proposes to bottle or prepare imported alcoholic beverages or to sell such beverages in this State must first obtain appropriate Manufacturer's and Wholesaler's or Retailer's licenses as provided in the Act. An Importer's license does not authorize bottling, preparation or resale of alcoholic beverages nor does any other license authorize importation of such beverages."

are invalid, void and unconstitutional in so far as the same apply to a person who imports, receives or possesses beer brought into the State of California from outside said State, or purport to limit the shipment or delivery of such beer to the holder of a beer importer's license.

4th. That the aforesaid provisions of the Alcoholic Beverage Control Act of the State of California impose discriminatory burdens upon plaintiffs herein and others similarly situated, on whose behalf this action is brought, in their business of importing into the State of California in

interstate commerce beer manufactured without said State; that said provisions of said act are not a valid exercise of the police powers of said State, but constitute unlawful burdens upon interstate commerce, in violation of the Constitution of the United States; that the plaintiffs and others similarly situated are entitled to injunctive relief [fol. 143] against the threatened enforcement of the aforesaid void and unconstitutional provisions of said act, and said regulations hereinbefore mentioned.

5th. That under the stipulation of the parties that the decree entered upon this hearing should be a final disposition of this cause, said injunction should be permanent, without bond; that the defendants State Board of Equalization of the State of California, John C. Corbett, Fred E. Stewart, R. E. Collins, Orfa Jean Shontz, Frank F. Merriam and U. S. Webb, and each of them, their respective appointees, assistants, employees, and successors in office, and each of them, should be enjoined and restrained from

(1) In any manner or in any way whatsoever enforcing against the plaintiffs and others situated similarly to plaintiffs, the provisions of the said Alcoholic Beverage Control Act, or the regulations issued thereunder, as hereinabove set out.

(2) From collecting or attempting to collect from plaintiffs, or any one of them, or from any person situated similarly to plaintiffs, the beer importer's license fee imposed by said act.

(3) From instituting or causing to be instituted any prosecution or proceeding, civil or criminal, against these plaintiffs, or any one of them, their officers, agents or employees, or any of them, or against any person situated similarly to plaintiffs, to enforce any of said provisions as hereinbefore described.

(4) From imposing or attempting to impose any of the penalties of said act for the failure of the plaintiffs or others similarly situated, to pay the beer importer's license fee required under said act.

[fols. 144 & 145] (5) From seizing or attempting to seize, selling or attempting to sell, any property of plaintiffs or

others similarly situated, for failure to pay said beer importer's license fee, or for failure to procure said beer importer's license, and from forfeiting or attempting to forfeit to the State of California any beer imported into the State of California, for failure of the consignee to pay said importer's license fee, or to procure said license.

(6) From interfering with or attempting to prevent any common or private carrier from transporting beer into the State of California for the sole reason that such beer may be consigned to a person who has not obtained such beer importer's license, and from interfering with or attempting to prevent any common or private carrier from delivering to such consignee beer which has been transported into the State of California and consigned to a person who does not have such beer importer's license, solely because of the lack of such license.

Dated this 9 day of October, 1935.

Curtis D. Wilbur, Judge of the United States Circuit Court of Appeals, Ninth Circuit; Hollzer, Judge of the United States District Court, Southern District of California, Central Division; Stephens, Judge of the United States District Court, Southern District of California, Central Division.

Approved as to form, as provided in Rule 44.

U. S. Webb, Attorney General, by Eugene M. Elson, Deputy.

[fols. 146 & 147] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. Eq. 736-H

YOUNG'S MARKET COMPANY, a Corporation; Simon Levi Company, Ltd., a Corporation; Haas Baruch & Company, of San Diego, a Corporation; W. L. Koerber, Doing Business under the Fictitious Firm-name and Style of Koerber Distributing Company, and George P. Higgins and George S. Higgins, Co-partners Doing Business under the Firm-name and Style of Higgins & Higgins, a Co-partnership, Plaintiffs,

vs.

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA; Frank F. Merriam, Governor of the State of California; U. S. Webb, Attorney General of the State of California; Ray L. Riley, John C. Corbett, Fred E. Stewart, R. E. Collins, Orfa Jean Shontz, George M. Stout and A. H. Flickinger, Defendants.

FINAL DECREE AND PERMANENT INJUNCTION.—Filed Oct. 9, 1935

The matter of the application of plaintiffs herein for an interlocutory injunction having come on regularly for hearing on the 4th day of September, 1935, at the hour of ten o'clock A. M., in the courtroom of the Honorable Harry A. Hollzer, on the third floor of the Federal Building, Los Angeles, California, before the Honorable Curtis D. Wilbur, Judge of the United States Circuit Court of [fol. 148] Appeals for the Ninth Circuit, the Honorable Harry A. Hollzer, Judge of the District Court of the United States, for the Southern District of California, Central Division, and the Honorable Albert Lee Stephens, Judge of the District Court of the United States, for the Southern District of California, Central Division, organized and sitting as a three-judge court under and by virtue of the provisions of Section 380 of the United States Code Annotated (Judicial Code, Section 266 as amended), for the hearing and determination of this cause, plaintiffs being represented and appearing by Baldwin Robertson and

William Larrabee, of their counsel, and defendants, Board of Equalization of the State of California, John C. Corbett, Fred E. Stewart, R. E. Collins, Orfa Jean Shontz, Frank F. Merriam, Governor of the State of California, and U. S. Webb, being represented and appearing by their counsel, U. S. Webb, Attorney General of the State of California, by Eugene M. Elson and Walter L. Bowers, Esquires, and the motion of said defendants for a dismissal of plaintiffs' complaint having also come on for hearing at said time and place and having been heard, and it being stipulated and agreed in open court by and between plaintiffs and said defendants, by and through their respective counsel of record, that plaintiffs' application for temporary injunction be heard upon plaintiffs' bill of complaint and the defendants' return to the order to show cause, verification of such return being waived by plain-
[fol. 149] tiffs, and it being likewise stipulated that further proof, hearing and argument upon plaintiffs' prayer for a permanent injunction be waived by the parties, and that the decree of the court entered upon this hearing should be a final disposition of this cause without the necessity of further hearing or proof upon the allegations of said bill; it being further stipulated that the issues for the determination of this court are of law and not of fact, the said defendants conceding that the allegations of plaintiffs' complaint having to do with or referring to the jurisdiction of this court as to the amount in controversy are true and correct, and the said defendants, by and through their counsel, having waived the grounds of their motion to dismiss plaintiffs' complaint and their return to the order to show cause in respect to the jurisdiction of this court as to the amount in controversy, and the court having announced its decision in favor of plaintiffs and against said defendants, and the court having heretofore made its findings of fact and conclusions of law herein, and being fully advised in the premises;

It is hereby Ordered, Adjudged and Decreed:

I

That that certain act entitled "An Act to license, regulate and control the manufacture, transportation, sale, purchase, possession and disposition of alcoholic beverages;

[fol. 150] to levy an excise tax on the sale of alcoholic beverages; to provide for the licensing of the manufacture, distribution and sale of alcoholic beverages; to prescribe penalties for the violation of this act; to make an appropriation for the enforcement of this act to take effect immediately, which said act is known and designated as Senate Bill No. 919, Chapter 330, Statutes of 1935, of the State of California, and is hereinafter denominated "Alcoholic Beverage Control Act," is invalid, void and unconstitutional in the particulars hereinafter stated and in so far as it contains the following provisions:

(1) Section 2, subsection (k) thereof, which reads:

"'Importer' means every person who, in the case of alcoholic beverages brought into this State from outside of this State, is the first in possession thereof within this State after the act of importation is completed."

in so far as said subsection refers to a person who imports, receives or possesses beer brought into the State of California from outside said State.

(2) Section 3 thereof, which reads:

"On and after July 1, 1935, no person shall perform any act or acts which would constitute such person a manufacturer, rectifier, importer, wholesaler, or retailer of any alcoholic beverage within the meaning of this act or shall package, label or sell any alcoholic beverage unless such person is authorized to do so by a license duly issued pursuant to the provisions of this act, or pursuant to the provisions of the State Liquor Control Act, Chapter 658, Statutes of 1933. Any person violating any provision of this section shall be guilty of a misdemeanor."

[fol. 151] in so far as said section applies or refers to a beer importer's license or requires a beer importer's license of a person who imports, receives or possesses beer brought into the State of California from outside said State.

(3) That portion of Section 5 thereof, reading as follows:

"The following are the types of licenses to be issued under this act and the annual fees to be charged therefor:

* * * * * * *

8. Beer importers license $500.00 per year.

* * * * * * *"

in so far as it refers to "beer importers' license" and the fee to be charged therefor.

(4) That portion of Section 6 thereof reading as follows:

"Except as otherwise provided in this act and subject to the provisions of section 22 of Article XX of the Constitution, the licenses provided for in the preceding section shall authorize the person to whom issued to exercise the following rights and privileges and no others at the premises for which issued during the year for which issued.

* * * * * * *

(d) Any importer's license authorizes the person to whom issued to become an importer of alcoholic beverages specified in the license and to export such alcoholic beverages.

* * * * * * *"

in so far as it refers to a person who imports, receives or possesses beer brought into the State of California from outside said State.

(5) That portion of Section 7 thereof reading as follows:

[fol. 152] "Each license issued under this act shall be issued to a specific person, and shall be issued for a specific location, the principal address of which shall be indicated on the license. Separate licenses shall be issued for each of the premises of any business establishment having more than one location.

* * * * * * *

Each license issued under this act is separate and distinct, shall be nontransferable from one person to another, and shall be transferable from the premises for which issued only as may be permitted by the board, upon payment of a transfer fee of five dollars for each license.

* * * * * * *"

in so far as it applies to or refers to a beer importer's license for a person who is the first in possession of beer

brought into the State of California from outside said State.

(6) Section 49 thereof, which reads:

"Common or private carriers shall transport alcoholic beverages into the State only when such alcoholic beverages are to be consigned to a licensed importer. The carrier must obtain the receipt of such importer for the alcoholic beverage so transported and delivered and, if the consignee refuses to give a receipt and show his importer's license to the carrier, the carrier shall be relieved of all responsibility for delivering said alcoholic beverage. Where the consignee is not a licensed importer the carrier shall immediately notify the board at Sacramento, giving full details as to the character of shipment, point of origin, destination, and address of the consignor and consignee and within ten days such alcoholic beverage shall be summarily forfeited to the State of California and shall be turned over to the board for sale at public auction."

in so far as it refers to the transportation, importation, carriage or delivery of any beer into the State of California from outside said State, or the duties of any carrier [fol. 153] in respect thereto, and in so far as it purports to provide for the forfeiture of any beer.

(7) Sections 10 and 11 of said act in so far as said sections refer to a beer importer's license for a person who imports, receives or possesses beer brought into the State of California from outside said State.

(8) Section 31 of said act, in so far as said section applies to beer importers' licenses, or the license fee therefor.

II

That subdivisions (a), (b), (d) and (e) of Rule 9, promulgated by the defendant State Board of Equalization of the State of California, under and by virtue of the terms of such Alcoholic Beverage Control Act, which read as follows:

"(a) Importer's License Necessary.—The owner or purchaser of alcoholic beverages shipped into this State from outside this State must have an appropriate Importer's

license for the premises at which such beverages first come to rest in this State after the act of importation is completed.

A licensee holding an importer's license for one premise may not have alcoholic beverages shipped to him from a point outside the State directly to another premise in this State for which he has not been issued an Importer's license.

Furthermore, the holder of an Importer's license may not take orders from wholesalers or retailers throughout the State and ship such beverages from outside the State direct to such wholesalers or retailers unless they hold appropriate Importers' licenses for each of the premises [fol. 154] to which such beverages are consigned. Beverages may be shipped from points outside the State only to premises for which Importer's licenses have been issued. After the beverages have been delivered to the premises for which the consignee holds an Importer's license, he may, if he desires to do so, reship them to other premises for which appropriate wholesale or retail licenses have been issued.

(b) Carriers Must Deliver Only to Licensed Importers. —No alcoholic beverages shall be transported into this State by any carrier, either common or private, unless consigned to a licensed importer. The carrier must obtain the receipt of such an importer for any beverages so transported, and if the carrier shall find that any shipment is consigned to, or intended for delivery to, anyone not a licensed importer, the beverages must not be delivered. In such case the carrier must immediately notify the board at Sacramento, giving full details as to the character of shipment, point of origin, destination, and names and addresses of consignor and consignee; no such shipment shall be released by the carrier except upon written order of the board.

(d) Mail Shipments Confined to Licensed Importers.— No alcoholic beverages shall be transported into this State by United States mail for delivery to anyone except a licensed importer. Postal authorities shall refuse delivery of any shipment of alcoholic beverages originating outside of this State unless the addressee can establish to

their satisfaction that he is duly licensed by this board to receive such a shipment.

(e) Importer's License Does Not Authorize Sale.—Every licensed importer who proposes to bottle or prepare imported alcoholic beverages or to sell such beverages in this State must first obtain appropriate Manufacturer's and Wholesaler's or Retailer's licenses as provided in the Act. An Importer's license does not authorize bottling, preparation or resale of alcoholic beverages nor does any other license authorize importation of such bevages."

[fol. 155] are invalid, void and unconstitutional in so far as the same apply to a person who imports, receives or possesses beer brought into the State of California from outside said state, or purport to limit the shipment or delivery of such beer to the holder of a beer importer's license.

III

That the defendants Board of Equalization of the State of California, John C. Corbett, Fred E. Stewart, R. E. Collins, Orfa Jean Shontz, Frank F. Merriam and U. S. Webb, and each of them, their respective appointees, assistants, employees and successors in office, and each of them, be and they are hereby permanently enjoined from in any way or manner whatsoever

(a) Enforcing against the plaintiffs and others situated similarly to plaintiffs, the provisions of the said Alcoholic Beverage Control Act, or the regulations issued thereunder, as hereinabove set out.

(b) Collecting or attempting to collect from plaintiffs, or any one of them, or from any person situated similarly to plaintiffs, the beer importer's license fee imposed by said act.

(c) Instituting or causing to be instituted any prosecution or proceeding, civil or criminal, against these plaintiffs, or any one of them, their officers, agents or employees, or any of them, or against any person situated similarly to plaintiffs, to enforce any of said provisions as herein-[fol. 156] before described.

(d) Imposing or attempting to impose any of the penalties of said act for the failure of the plaintiffs or others similarly situated, to pay the beer importer's license fee required under said act.

(e) Seizing or attempting to seize, selling or attempting to sell, any property of plaintiffs or others similarly situated, for failure to pay said beer importer's license fee, or for failure to procure said beer importer's license, and from forfeiting or attempting to forfeit to the State of California any beer imported into the State of California, for failure of the consignee to pay said importer's license fee, or to procure said license.

(f) Interfering with or attempting to prevent any common or private carrier from transporting beer into the State of California for the sole reason that such beer may be consigned to a person who has not obtained such beer importer's license, and from interfering with or attempting to prevent any common or private carrier from delivering to such consignee beer which has been transported into the State of California and consigned to a person who does not have such beer importer's license, solely because of the lack of such license.

Dated this 9 day of October, 1935.

[fol. 157-161]

Curtis D. Wilbur, Judge of the United States Circuit Court of Appeals, Ninth Circuit; Hollzer, Judge of the United States District Court, Southern District of California, Central Division; Stephens, Judge of the United States District Court, Southern District of California, Central Division.

Decree entered and recorded October 9, 1935.

R. S. Zimmerman, Clerk, by M. R. Winchell, Deputy Clerk.

[fols. 162-202] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL

The foregoing petition is hereby granted and the appeal of the defendants, and each of them, is allowed upon giving

bond as required by law in the sum of Two Hundred Fifty Dollars ($250.00).

Dated, January 7, 1936.

Albert Lee Stephens, Judge of the United States District Court.

[fol. 203] IN SUPREME COURT OF THE UNITED STATES

ORDER ENLARGING TIME TO DOCKET CASE—Filed March 3, 1936

It appearing that the record on appeal in the above entitled matter has not been prepared for the reason that such record is not settled, and there being now pending in the District Court of the United States, for the Southern District of California, in the case from which this appeal is taken, an application by the above named appellees to settle a proposed statement of evidence on this appeal for the purpose of including the same in the record, and good and sufficient cause appearing therefor,

It is hereby ordered that the time within which to docket the above entitled case and to file the record on appeal thereof with the Clerk of the Supreme Court of the United [fol. 204] States may be enlarged to April 7th, 1936, and the above named appellants are hereby granted to and including April 7th, 1936, within which to docket the above entitled case with the Clerk of the Supreme Court of the United States and to file the record on appeal herein with the Clerk of said Court.

Dated, February 28th, 1936.

Albert Lee Stephens, Judge of the United States District Court, for the Southern District of California, and the Judge who signed the Citation herein.

[fol. 204½] [File endorsement omitted.]

[fols. 205-206] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—
Filed April 6, 1936

Come now the appellants in the above entitled cause and in support of their appeal hereby file their definite statement of the points on which they intend to rely and hereby state such points to be as follows:

That the District Court of the United States, for the Southern District of California, Central Division, and the special three-judge court organized and sitting therein erred:

1. In finding and holding that the Alcoholic Beverage [fol. 207] Control Act, Senate Bill No. 919, Chapter 330, pages 1123 to 1153 inclusive, Statutes of 1935 of the State of California, is invalid, void and unconstitutional in either or any and in each and all of the following particulars, terms and provisions thereof, and insofar as it contains either or any and each and all of the following provisions, to-wit:

(a) Section 2, subsection (k) thereof, which reads:

"'Importer' means every person who, in the case of alcoholic beverages brought into this State from outside of this State, is the first in possession thereof within this State after the act of importation is completed."

insofar as said subsection refers to a person who imports, receives or possesses beer brought in to the State of California from outside said State.

(b) Section 3 thereof, which reads:

"On and after July 1, 1935, no person shall perform any act or acts which would constitute such person a manufacturer, rectifier, importer, wholesaler, or retailer of any alcoholic beverage within the meaning of this act or shall package, label or sell any alcoholic beverage unless such person is authorized to do so by a license duly issued pursuant to the provisions of this act, or pursuant to the provisions of the State Liquor Control Act, Chapter 658,

Statutes of 1933; any person violating any provisions of this section shall be guilty of a misdemeanor."

insofar as said section applies or refers to a beer importer's license or requires a beer importer's license of a person who imports, receives or possesses beer brought into the [fol. 208] State of California from outside said State.

(c) That portion of Section 5 thereof, reading as follows:

"The following are the types of licenses to be issued under this act and the annual fees to be charged therefor:

* * * * * * *

8. Beer importers license $500.00 per year

* * * * * * *"

insofar as it refers to "beer importers' license" and the fee to be charged therefor:

(d) That portion of Section 6 thereof reading as follows:

"Except as otherwise provided in this act and subject to the provisions of section 22 of Article XX of the Constitution, the licenses provided for in the preceding section shall authorize the person to whom issued to exercise the following rights and privileges and no others at the premises for which issued during the year for which issued.

* * * * * * *

(d) Any importer's license authorizes the person to whom issued to become an importer of alcoholic beverages specified in the license and to export such alcoholic beverage.

* * * * * * *"

insofar as it refers to a person who imports, receives or possesses beer brought into the State of California from outside said State.

(e) That portion of Section 7 thereof reading as follows:

"Each license issued under this act shall be issued to a specific person, and * * * shall be issued for a specific [fol. 209] location, the principal address of which shall be indicated on the license. Separate licenses shall be issued

for each of the premises of any business establishment having more than one location.

* * * * * * *

Each license issued under this act is separate and distinct, shall be nontransferable from one person to another, and shall be transferable from the premises for which issued only as may be permitted by the board, upon payment of a transfer fee of five dollars for each license.

* * * * * * *"

insofar as it applies to or refers to a beer importer's license for a person who is the first in possession of beer brought into the State of California from outside said State.

(f) Section 49 thereof, which reads:

"Common or private carriers shall transport alcoholic beverages into the State only when such alcoholic beverages are to be consigned to a licensed importer. The carrier must obtain the receipt of such importer for the alcoholic beverage so transported and delivered and, if the consignee refuses to give a receipt and show his importer's license to the carrier, the carrier shall be relieved of all responsibility for delivering said alcoholic beverage. Where the consignee is not a licensed importer the carrier shall immediately notify the board at Sacramento, giving full details as to the character of shipment, point of origin, destination, and address of the consignor and consignee and within ten days such alcoholic beverage shall be summarily forfeited to the State of California and shall be turned over to the board for sale at public auction."

insofar as it refers to the transportation, importation, carriage or delivery of any beer into the State of California from outside said State, or the duties of any carrier in respect thereto, and insofar as it purports to provide for [fol. 210] the forfeiture of any beer.

(g) Sections 10 and 11 of said Act insofar as said sections refer to a beer importer's license for a person who imports, receives or possesses beer brought into the State of California from outside said state.

(h) Section 31 of said Act, insofar as said section applies to beer importers' licenses, or the license fee therefor.

2. In finding and holding that subdivisions a, b, d, and e, or any or either of them, of Rule 9, promulgated by the State Board of Equalization of the State of California, under and by virtue of the terms of such Alcoholic Beverage Control Act, which read as follows:

"(a) Importer's License Necessary.—The owner or purchaser of alcoholic beverages shipped into this state from outside this state must have an appropriate Importer's license for the premises at which beverages first come to rest in this state after the act of importation is completed.

A licensee holding an importer's license for one premise may not have alcoholic beverages shipped to him from a point outside the state directly to another premise in this state for which he has not been issued an importer's license.

Furthermore, the holder of an importer's license may not take orders from wholesalers or retailers throughout the state and ship such beverages from outside the state direct to such wholesalers or retailers unless they hold appropriate importer's licenses for each of the premises to which such beverages are consigned. Beverages may be shipped from points outside the state only to premises for which importers' licenses have been issued. After the [fol. 211] beverages have been delivered to the premises for which the consignee holds an importer's license, he may, if he desires to do so, reship them to other premises for which appropriate wholesale or retail licenses have been issued.

(b) Carriers Must Deliver Only to Licensed Importers. —No alcoholic beverages shall be transported into this state by any carrier, either common or private, unless consigned to a licensed importer. The carrier must obtain the receipt of such an importer for any beverages so transported, and if the carrier shall find that any shipment is consigned to, or intended for delivery to, anyone not a licensed importer, the beverages must not be delivered. In such case the carrier must immediately notify the board at Sacramento, giving full details as to the character of shipment, point of origin, destination, and names and ad-

dresses of consignor and consignee; no such shipment shall be released by the carrier, except upon written order of the board.

(d) Mail Shipments Confined to Licensed Importers.—No alcoholic beverages shall be transported into this state by United States mail for delivery to anyone except a licensed importer. Postal authorities shall refuse delivery of any shipment of alcoholic beverages originating outside of this state unless the addressee can establish to their satisfaction that he is duly licensed by this board to receive such a shipment.

(e) Importer's License Does Not Authorize Sale.—Every licensed importer who proposes to bottle or prepare imported alcoholic beverages or to sell such beverages in this state must first obtain appropriate Manufacturer's and Wholesaler's or Retailer's licenses as provided in the Act. An Importer's license does not authorize bottling, preparation or resale of alcoholic beverages nor does any other license authorize importation of such beverages."

are invalid, void and unconstitutional, and in so finding and holding as to either or any of said subdivisions, insofar as the same apply to a person who imports, receives or [fol. 212] possesses beer brought into the State of California from outside said state, or purport to limit the shipment or delivery of such beer to the holder of a beer importer's license.

3. In finding and holding that the aforesaid provisions of said Alcoholic Beverage Control Act of the State of California, or any or either of such provisions, impose any discriminatory burdens upon appellees (plaintiffs below) herein and others similarly situated in their business of importing into the State of California in interstate commerce beer manufactured without said state, and that the same constitute unlawful burdens upon interstate commerce in violation of the Constitution of the United States.

4. In finding and holding that the aforesaid provisions of the Alcoholic Beverage Control Act of the State of California, or any or either of them, are not a valid exercise of the police powers of said state.

5. In finding and holding that intoxicating liquors are not excepted from the provisions of the Commerce Clause (sec-

tion 8, article 1) and the Equal protection Clause (section 1, amendment 14) of the Constitution of the United States.

6. In finding and holding that the classification of importers under the statute in question as a class distinct from others engaged in the liquor business is unreasonable and [fol. 213] arbitrary and unlawfully discriminates between wholesalers of beer imported into the State of California, and wholesalers of beer manufactured in said state to the detriment of the former.

7. In finding and holding that the plaintiffs and others similarly situated were entitled to injunctive relief, and in granting and issuing a permanent injunction against the enforcement of the aforesaid provisions of said Alcoholic Beverage Control Act of the State of California and the aforesaid regulations issued thereunder, and any or either of them, by these appellants (defendants below), or any or either of them, or by any other person or persons.

8. In rendering and entering its final decree holding that the aforesaid provisions of the Alcoholic Beverage Control Act of the State of California, and the aforesaid regulations issued thereunder, and any or either of them, is invalid, void, and unconstitutional, and in issuing its permament injunction enjoining appellants, and each of them, from enforcing such provisions and regulations, or any or either of them, and from executing such provisions of said statute of the State of California.

9. In overruling and disallowing appellants' proposed amendment XIX to the findings and in thereby leaving in finding XV the words, and so finding as a fact "that the imposition of an importer's license at each of plaintiffs' (appellees here) said points of distribution and all such [fol. 214] points of distribution belonging to others similarly situated is a direct charge upon the beer so imported and upon the prices at which said imported beer may be sold in the state of California, and is a discrimination and charge as against such beer so manufactured outside of the state of California and in favor of the beer manufactured within the state of California."

10. In overruling and disallowing appellants' proposed amendment XX to the findings and in thereby leaving in finding XV the words, and so finding as a fact "and plain-

tiffs (appellees here) and others similarly situated will thereby be deprived of their property, and the loss and damage that will be suffered by these plaintiffs (appellees here) and others similarly situated if said Act, in so far as it refers to beer importers' licenses, be enforced, will be irreparable."

11. In overruling and disallowing appellants' proposed amendment XXI to the findings and in thereby leaving in finding XVI the words, and so finding as a fact "that the damage and loss which will be so suffered by plaintiffs (appellees here) and others similarly situated if the provisions of said Act relating to beer importers' licenses are enforced against them will be irreparable, that plaintiffs (appellees here) and others similarly situated are without any plain, adequate or speedy remedy at law in the premises and it is only by aid of the injunctive processes of this court that plaintiffs (appellees here) and others similarly situated can be fully protected in the enjoyment of their property and rights;".

[fol. 215] 12. In ordering, adjudging and decreeing that the Bill in Equity be sustained, and that an injunction issue against the appellants herein.

And appellants further state that only the following parts of the record, as filed in this court, need be printed by the clerk for the hearing of the cause:

Title of Paper	Record Page
Bill in Equity for Injunction	6- 75 inclusive
Motion for temporary restraining order and application for hearing for interlocutory injunction	77- 78 "
Return to order to show cause, restraining order and application for interlocutory injunction	91-101 "
Statement of evidence	103-105 "
Opinion	107-115 "
Special findings of fact and conclusions of law	117-144 "
Final decree and permanent injunction	147-157 "

U. S. Webb, Attorney General, by Walter Bowers, James S. Howie, Deputies Attorney General, Attorneys for Appellants.

Receipt of copy of the foregoing Statement is hereby acknowledged this 1st day of April, 1936.

Edwin A. Meserve, Meserve, Mumper, Hughes & Robertson, and M. J. Donnelly, by Edwin A. Meserve, Attorneys for Appellees.

[fol. 216] Appellees hereby waive any designation by them of additional parts of the record to be printed herein, and do hereby consent to the hearing of the above entitled cause on the foregoing parts of the record designated by appellants.

Dated April 1st, 1936.

Edwin A. Meserve and Meserve, Mumper, Hughes & Robertson, and M. J. Donnelly, by Edwin A. Meserve, Attorneys for Appellees.

[fol. 216½] [File endorsement omitted.]

[fol. 217] SUPREME COURT OF THE UNITED STATES

STIPULATION IN RE PRINTING OF RECORD—Filed June 25, 1936

It is hereby stipulated by and between the above named appellants and appellees, through their respective counsel of record herein that

Whereas the Alcoholic Beverage Control Act of the State of California (Chapter 330, Statutes 1935) has been heretofore printed in full in the Statement as to Jurisdiction filed herein, that the same need not be reprinted in the record on appeal herein but that wherever in such record the said act appears reference may be made thereto and the fact noted that the same appears in full in said Statement as to Jurisdiction, or in such other manner as the Clerk of the above entitled Court may designate.

Dated June 11, 1936.

U. S. Webb, Attorney General, by Walter Bowers, Eugene M. Elson, James S. Howie, Deputies, Attorneys for Appellants. Edwin A. Meserve, Attorney for Appellees.

[fol. 218] [File endorsement omitted.]

Endorsed on cover: File No. 40,411. D. C. U. S., S. California Term No. 22. State Board of Equalization of the State of California et al., Appellants, vs. Young's Market Company et al. Filed April 3, 1936. Term No. 22, O. T., 1936.